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Is there more to restorative justice than mere compliance to procedural justice?

A qualitative reflection from the victims' point of view

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Is there more to restorative justice than mere compliance to procedural justice? A qualitative reflection from the victims' point of view

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Résumé

Une multitude de recherches évaluatives ont démontré que les victimes de crime, qu'elles soient victimes d'un crime contre les biens ou contre la personne, apprécient l'approche réparatrice. Cependant, nous sommes toujours à la recherche des facteurs théoriques qui expliqueraient la satisfaction des victimes en ce qui concerne leur expérience avec les interventions réparatrices. La recherche décrite dans cette thèse concerne l'exploration des facteurs contribuant à la satisfaction des victimes de crime avec l'approche réparatrice ainsi que ses liens avec la théorie de justice procédurale. Selon la théorie de justice procédurale, la perception de justice n'est pas uniquement associée à l'appréciation du résultat d'une intervention, mais également à l'appréciation de la procédure, et que la procédure et le résultat peuvent être évalués de façon indépendante. Les procédures qui privilégient la confiance, la neutralité et le respect, ainsi que la participation et la voix des parties sont plus appréciées.

Notre objectif de recherche était d'explorer l'analogie entre l'appréciation de la justice réparatrice et le concept de justice procédurale. En outre, nous avons voulu déterminer si la justice réparatrice surpasse, en termes de satisfaction, ceux prévus par la théorie de justice procédurale. Nous avons également examiné la différence dans l'appréciation de l'approche réparatrice selon le moment de l'application, soit avant ou après adjudication pénale. Ainsi, nous avons exploré le rôle d'une décision judiciaire dans l'évaluation de l'approche réparatrice.

Pour répondre à nos objectifs de recherche, nous avons consulté des victimes de crime violent au sujet de leur expérience avec l'approche réparatrice. Nous avons mené des entrevues semi-directives avec des victimes de crime violent qui ont participé à une médiation auteur-victime, à une concertation réparatrice en groupe ou aux rencontres détenus-victimes au Canada (N=13) et en Belgique (N=21). Dans cet échantillon, 14 répondants ont participé à une intervention réparatrice avant adjudication judiciaire et 14 après adjudication.

Nous avons observé que l'approche réparatrice semble être en analogie avec la théorie de justice procédurale. D'ailleurs, l'approche réparatrice dépasse les prémisses de la justice procédurale en étant flexible, en offrant de l'aide, en se concentrant sur le dialogue et en permettant d'aborder des raisons altruistes. Finalement, le moment de l'application, soit avant ou après adjudication, ne semble pas affecter l'appréciation des interventions réparatrices. Néanmoins, le rôle attribué à l'intervention réparatrice ainsi que l'effet sur l'évaluation du système judiciaire diffèrent selon le moment d'application. Les victimes suggèrent de continuer à développer l'approche réparatrice en tant que complément aux procédures judiciaires, plutôt qu'en tant que mesure alternative.

Les témoignages des victimes servent la cause de l'offre réparatrice aux victimes de crime violent. L'offre réparatrice pourrait aussi être élargie aux différentes phases du système judiciaire. Cependant, la préférence pour l'approche réparatrice comme complément aux procédures judiciaires implique la nécessité d'investir également dans la capacité du système judiciaire de répondre aux besoins des victimes, tant sur le plan de la procédure que sur le plan du traitement par les autorités judiciaires.

Mots-clés : Justice réparatrice, justice procédurale, justice interactionnelle, victimes, Canada, Belgique, recherche qualitative

Abstract

Multiple evaluative studies have demonstrated that victims of crime, irrespective of the type of crime, are satisfied with their participation in a restorative intervention. However, the theoretical explanation for victim satisfaction with restorative practices has, until recently, remained largely neglected. The research presented in this dissertation concerns the exploration of factors contributing to victim satisfaction with the restorative approach and their relation to the procedural justice theory. The theory of procedural justice predicts that the perception of fairness is not only related to the favourability of the outcome but also to the appreciation of certain procedural factors and that a procedure can be assessed irrespective of its outcome. Procedures in which authorities are perceived as trustworthy, neutral and respectful and in which disputants feel involved are more appreciated and perceived as fair.

Our research objective is to verify whether victims' appreciation of restorative justice complies with the procedural justice model. In other words, does the procedural justice theory explain victim satisfaction with the restorative approach or is there more to restorative justice than procedural justice? We also examined the appreciation of the restorative approach relative to its timing in the criminal justice proceedings, *i.e.* before and after penal adjudication. As such we could observe whether the absence or availability of a judicial decision colours victims' evaluation of restorative justice.

In search of parallels between the theory of restorative justice and procedural justice, we consulted victims of violent crime about their experiences with the restorative approach. Semi-directive interviews were conducted with victims of violent crime who had participated in victim-offender mediation, family group conference or victim-offender encounters in Canada (N=13) and in Belgium (N=21). Of these, 14 respondents participated in the restorative intervention before adjudication and 14 after judicial adjudication.

We found that the restorative approach complies very well with the procedural justice model. However, it also exceeds the procedural justice model in being flexible, providing care, centring on dialogue and permitting prosocial justice motives to be

addressed. Finally, the appreciation for restorative interventions is positive both when it is used before and after adjudication. Whether restorative justice precedes or follows adjudication is, however, related to victims' satisfaction with the criminal justice system. Victims who participated in a restorative intervention after adjudication were generally dissatisfied with the criminal justice proceedings, while victims who participated prior to adjudication were generally satisfied with the criminal justice system. Moreover, victims appreciate the complementary nature of the restorative approach in relation to the judicial proceedings.

The findings suggest that restorative justice is appropriate in cases of violent crime and as such that restorative justice should be made more available to victims of violence both prior and after adjudication. Nevertheless, because of its complementary nature, investment in the capacity of the criminal justice system to better respond to victims' procedural and interactional needs is also required.

Keywords: Restorative justice, procedural justice, interactional justice, victims, Canada, Belgium, qualitative research

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VOM	:	victim-offender mediation
VOE	:	victim-offender encounters
FGC	:	family group conferencing
CSC	:	Correctional Service Canada

For Erik

A word of thanks

Writing a Ph.D. dissertation is supposedly a rather solitary activity. However, I felt there was a great number of people who supported me and patiently accompanied me to the finish.

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Introduction

Decades of developing and evaluating restorative practices, applied globally both in property crime and crime against a person, have resulted in unquestionably encouraging findings. For instance, victim satisfaction with restorative interventions, such as victim-offender mediation, family group conferencing and victim-offender encounters, is high. It is not only interesting to know that victims of crime appreciate the restorative approach. It is even more interesting to learn what exactly makes the restorative approach satisfactory. If one has insight into what makes restorative justice satisfactory, good practice can be maintained and further developed. However, the theoretical explanation of victim satisfaction with restorative justice has long been neglected.

To this end, inspiration can be found in social justice research. Justice scholars have been studying the assessment of fairness, the identification of satisfactory conflict resolution procedures and the factors that make these procedures favourable. Procedural justice research, for instance, has demonstrated that procedures can be assessed irrespective of their outcome. It has also been found that procedures in which disputants perceive trust, neutrality, respect and opportunity for voice are considered fair.

There is an apparent overlap between the restorative justice and procedural justice model. The focus on communication and involvement, which characterize the restorative approach, can be translated as voice or process control, an element central in the procedural justice model. In search for a theoretical explanation of victim satisfaction with the restorative approach, we further explored the compliance between the procedural justice and the appreciation of the restorative approach.

Our research is organized to respond to three empirical objectives. Firstly, we verified whether restorative justice complies with procedural justice. We could then indicate the relevance of the procedural justice model to explain victim satisfaction with restorative justice. Secondly, if restorative justice complies with procedural justice, does it also exceed

procedural justice? We wanted to know whether restorative justice has a unique quality, other than being procedurally just. Thirdly, we looked at victims' appreciation of the restorative approach relative to it being applied before or after penal adjudication.

Since we were looking to paste the procedural justice model on experiences with restorative justice as well as find explanatory factors that are not accounted for by the procedural justice model, we chose a qualitative research design. We conducted semi-directive interviews with victims of violent crime who participated in a restorative intervention. The semi-directive interview is an optimal instrument to offer respondents the space and time to freely reflect on their experiences as privileged witnesses of the social reality studied. Our sample includes thirty-four victims of violent crime, committed either by an adult or young offender, who participated in victim-offender mediation, family group conference or victim-offender encounters. Because we also wanted to learn about the affect of the timing of the restorative intervention in the criminal justice proceedings, we did not only interview victims in Canada but also in Belgium, where, in contrast to Canada, restorative interventions are offered not only after but also before adjudication. Fourteen respondents, all but one Belgian, participated in a restorative intervention before adjudication and another fourteen respondents, six of which are Belgian and eight Canadian, participated in a restorative intervention after adjudication.

The first chapter offers an overview of the literature concerning restorative justice and procedural justice, their origins and research developments regarding both models. In chapter 2 we sketch the context of the Canadian and Belgian restorative justice practices. We did not intend to compare the experiences of Belgian and Canadian victims as such, but to compare the experiences of victims with their participation in a restorative intervention before or after judicial adjudication. However, the creation of a mixed sample, including respondents from two diverging adjudicatory regimes in which different restorative justice policies have been adopted, requires contextualization. Chapter 3 concerns the description of the methodological design and research sample. In chapter 4, we present our findings

regarding the compliance between restorative approach and the procedural justice model. In chapter 5, we present our observations regarding the restorative approach moving beyond the procedural justice model. In chapter 6, we describe the victims' experiences with restorative interventions related to having been used before or after judicial adjudication. Finally, chapter 7 assembles some final conclusions and implications for restorative justice and victim policies.

1. A review of two distinct approaches to the concept of 'justice'

This chapter covers the restorative justice and procedural justice theory. Firstly, we describe the restorative justice theory, its origins and practices as well as empirical findings on restorative practices, for instance on victim satisfaction with restorative justice (1.1.). Secondly, the procedural justice model and its theoretical evolution are presented as well as its meaning for victims of crime (1.2.). Thirdly, the relation between the two justice models will be outlined (1.3.).

1.1. On restorative justice

1.1.1. From grassroots practices to theory

1.1.1.1. The origins of restorative practices

For decades, criminologists have been looking for the most efficient way to respond to delinquent behaviour and to engage delinquents in desistance from crime. It became apparent that mere seclusion from society through imprisonment and the retributive model did not ensure success in preventing recidivism. Therefore, experiments with the treatment of offenders were established, introducing the rehabilitative model. Empirical data, however, showed that treatment did not meet expectations and failed to adequately prevent recidivism. Based on the assessment of prison treatment programs in the USA, Martinson (1974) concluded that treatment had neither a negative nor a positive impact on recidivism.

He threw in the towel and wrote his infamous '*nothing works*' discourse (Martinson, 1974; Lipton, Martinson & Wilks, 1975).[1]

Also in 1974, experimentation with restorative practices started in Canada, which broadened the focus on offenders to incorporate attention for the victims' needs and the community. In response to two intoxicated young adults of 18 and 19 who had gone on a rampage vandalizing cars in Kitchener, Ontario, Mark Yantzi, a probation officer and Mennonite community justice volunteer, proposed to the judge to allow the offenders to meet their victims, apologize and work out compensation agreements with their victims. Following the appreciation of this initiative by both the offenders and victims involved, the Victim-Offender Reconciliation Program (VORP) was born. It was later exported to other Canadian provinces and to the USA (Peachey, 1989) and also inspired European scholars and practitioners (Aertsen *et al.*, 2004). Comparable initiatives have been developed worldwide since; most of them in response to youth crime (see for instance Walgrave (ed.), 1998; Woolford & Ratner, 2010). In many instances, the initiating organizations had religious roots, such as the Mennonite Central Committee involved in the initiation of the VORP, which has subsequently been very active in the field of restorative justice development and programs in Canada and the USA (Church Council on Justice and Corrections, 1996) with Howard Zehr (1990) at the forefront.

While these restorative programs were mainly developed locally as grassroots initiatives, they surfaced in the same period across Europe and North America. As it seems, the general *Zeitgeist* was approving of the development of a new model of social reaction to crime, distancing itself from the sole focus on the offender as done in the retributive and in the rehabilitative model. According to Faget (1997), the rise of the restorative approach was not spontaneous; instead it was related to the shifting focus from thinking about the causes

[1] To mark this scholar's desperation, Martinson threw himself from the window of his office only a couple of years later in 1980 (Miller, 1989).

of crime to assessing the impact of penal policies on the phenomenon of criminality. He identified three ideological discourses emerging in the western criminal justice thinking in the 70's, that collided and created a favourable climate for experimenting with measures inspired by the restorative idea: (1) the denunciation of the harmful effects of incarceration and punishment, (2) the rediscovery of the victim, and (3) the need to restore the ruptured community and destructed traditional institutions. Each of them inspire on their own innovations within the criminal justice system. In their collision, these three heterogeneous discourses mirror the three corners of the restorative justice triangle, representing the offender, the victim and the community.

The first of these currents concerns the identification of the devastating effects of the traditional penal interventions on offenders and the contestation of repressive institutions. Punishment, and incarceration in particular, do not necessarily reduce crime or recidivism; on the contrary, it could have a criminogenic effect (Faget, 1997). *E.g.* in severing the social ties of the incarcerated offender with his relatives and the labour market, it reduces the chances of a norm-conform life after liberation. According to Wright (1996), in contrast to punishment, which is intended to be painful, a reparative measure does not depend on unpleasantness or painfulness for its effect, even though it might be demanding of the offender. The call for the abolition of prison is the most extreme materialization of this ideological discourse (see for instance Hulsman, 1986).

Secondly, the victims, a long forgotten party (Viano, 1978), were rediscovered in the 70's. The victim entirely disappeared from the adversarial criminal procedure with the establishment of the public prosecutor in the 19th century, replacing the mechanism of private prosecution, which institutionalized the mechanism of private vengeance, over which the State had absolutely no control (Rock, 2004). The fact that the State took over the burden of prosecution from victims was fortunate, as it released victims from proceeding at their own expense and from the responsibility of the evidence-production

(Wright, 1996). But the victim's claims were entirely replaced with those of the State, resulting in the removal of private victims from participation in tribunals (Weitekamp, 2000; Rock, 2004). Christie (1977) points out that the conflict belongs to the victim and the offender, and urges the State to give the conflict back to its owners. Or: the '*(h)arm done to the victim as a private individual should not be forgotten even though the state takes on the responsibility of prosecuting the offender in the public interest* (Fenwick, 1997, p.312)'. While '*decision-making power is always exercised by a non-partisan adjudicator, it does not necessarily follow that any input of the victim should be incapable of being considered* (Doak, 2005, p.316)'.

The rediscovery of the victim initially gave rise to the installation of victim support services, specialized in dealing with the consequences of victimization for the individual victim (Lemonne, Van Camp & Vanfraechem, 2007). Support in itself does not change the criminal justice system and does not impact the victim's role, which is traditionally limited to that of the gatekeeper and witness in the criminal justice system. In this sense, Fenwick (1997) pleads to give victims not only service rights (*e.g.* right to respectful treatment and victim support) but also procedural rights. Victims were attributed the right to information regarding the procedures and their file, a respectful treatment by police and judicial actors, compensation and support, as well as a position in the penal procedures (see for instance the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the European Council Framework Decision of March 15th 2001 on the standing of victims in criminal proceedings). While victims in the inquisitorial criminal justice regimes, used in continental European countries, have the possibility to register and participate to penal procedures as a civil party (*partie civile*)[2], they are now also allowed in

[2] In the inquisitorial regime a victim can add a civil claim to the criminal claim filed by the prosecutor in the name of the public and the State. Both these claims will be addressed simultaneously in the criminal trial. The civil party can, hence, profit from the evidence-production by the public prosecutor in addressing the civil claims. The adversarial regime does not know the figure of the civil party. Here, civil claims can only be addressed after the criminal claims have been studied and responded to and this in a separate civil procedure.

some jurisdictions to present a victim impact statement. The victim impact statement is an option that has also been made available in the adversarial regimes in North America. It is a written or oral account of the consequences of the crime for the victim presented to a judge or parole board. It allows victims to express their concerns, but the statement has no formal impact on the judicial decision. Such reforms have been controversial (Sanders *et al.*, 2001) and criticized for the potential unfavourable impact of victim input on sentencing outcomes and processes (*e.g.* Ashworth, 2002). In practice this feared impact appears to be negligible (Erez & Rogers, 1999). Research findings indicate that not only victims but also judges at the sentencing level benefit from victim impact evidence and that there is no systematic evidence that victim impact statements make sentences harsher. Victim input at the parole phase, however, seems less justified because victims seldom possess information relevant for parole (Roberts, 2009).

Despite these victim-oriented reforms, the criminal justice system has not changed much. Victim-oriented policies tend to be poorly implemented (Roberts, 2009). Judicial practitioners oppose these reforms and find ways to circumvent them (Erez & Rogers, 1999; Roberts & Erez, 2004). "*In both the adversarial and inquisitorial systems, practitioners and policy makers appear reluctant to alter, develop or resource procedures that are capable of giving the victim a greater role at the trial* (Doak, 2005, p.314)".

The third ideological discourse leading up to the development of restorative practices in the 70's concerns the exaltation of the community. Its advocates state that the main cause of delinquency is social disorganization and therefore, plead for the restoration of the ruptured community regulatory systems. In other words, they highlight the importance of social control and informal conflict reckoning versus institutionalized control and formalized conflict resolution in the prevention of crime (Christie, 1993; Pratt, 2002). In this

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(Sometimes the term 'civil claimant' is used as a synonym for 'civil party', which is the more commonly used term.)

perspective, Deklerck and Depuydt (1998) point out that the overuse of penal institutions and the formalization of conflict handling are counterproductive. Programs favouring social inclusion or "linkedness" to one's self, to the community and to the material and ecological environment address the roots of delinquency, which they see as the lack of a link or '*de-link-ency*', rather than addressing the effects of delinquency. Crawford (1997), however, notes that community is thus far the most contestable, if not utopian, concept in the restorative justice theory (see also McCold, 1996; Faget, 2000; Vanfraechem, 2007). He also denounces the recuperation of the community by the State as a means to reduce the State's investments in holding the community responsible for crime prevention, characteristic for a neo-liberalist climate (see also Garland, 2001). This neo-liberalist approach is almost a perverse interpretation of Christie's plea for returning the conflict to its rightful owners, *i.e.* victim, offender and community (Christie, 1977). In any case,

> 'the ascendancy of neoliberalism over a declining welfare state became more pronounced and created a political opening for justice advocates to pursue policies that would decentralize justice and allow communities a greater role in their own governance. These structural conditions combined with opportunities to bridge justice concerns with those of other prominent social movements that were mobilized around issues of identity politics, victims' rights and deprofessionalization. In combination, these factors produced what might be considered a 'reparative turn' (Woolford & Ratner, 2010, p.6)'.

The climate for the development of a new justice model, which needed to give an active role to the victim, offender and community and favour informal dispute resolution, was now taking form. Some claim that inspiration was sought and found in indigenous justice processes (*e.g.* Weitekamp, 1999; Van Ness, 2005) as well as in spiritual sources (*e.g.* Zehr, 1990). Daly (2002, 2004), however, draws attention to the dangers of such a mythical representation of restorative justice. We agree that holding on to these myths might diminish the credibility of restorative justice as a theoretical model, but it is obvious that

some of the restorative practices borrowed elements from indigenous conflict resolution processes, as will be seen in the following paragraph.

1.1.1.2. Restorative practices around the world

There is a multitude of restorative instruments, which are being implemented worldwide (Van Ness, 2005; Liebmann, 2007). Nowadays, restorative interventions are being applied with regard to offences committed by juvenile or adult offenders. While initially restorative practices were mainly reserved for non-violent crime, it is now being applied in cases of property crime as well as in cases of a crime against a person (in other words a variety of crime types ranging from vandalism, pick pocketing or burglary to incest, rape or murder). It is being used in crimes committed to individual victims as well as in cases of mass-victimization and genocide. Restorative interventions take place at the stage of police investigation as well as in the different judicial stages (prosecution, trial, during the execution of the sentence or after a sentence has been fulfilled). They are being executed by specialized restorative services (outsourced) or by trained police or judicial staff (in-house) (Liebmann, 2007). The possible direct outcome of a restorative intervention varies from an apology, material restoration, financial compensation, symbolic reparation to forgiveness.

The restorative instruments vary also with regard to its participants and can hence be categorized from least to most inclusive (Aertsen *et al.*, 2004; Van Ness, 2005). First on the list is victim-offender mediation (VOM), probably the most common and well-known application of the restorative notion in North America (Umbreit, 1994a) and in Europe (Aertsen *et al.*, 2004). While local practices can differ in execution and judicial objective (*i.e.* diversionary or complementary to penal procedures), the basic elements are common. VOM involves the victim and offender of a crime, brought together on a voluntary basis by a mediator who facilitates a face-to-face meeting or travels back and forth between victim and offender to pass messages from one to the other (called shuttle or indirect mediation).

'*With the assistance of a trained mediator, the victim is able to let the offender know how the crime affected him or her, to receive answers to questions, and to be directly involved in developing a restitution plan for the offender to be accountable for the losses he or she incurred. The offender is able to take direct responsibility for his or her behavior, to learn of the full impact of what he or she did, and to develop a plan for making amends to the person he or she violated* (Umbreit, Coates & Vos, 2004, p.279)'. A face-to-face meeting is preceded by preparatory meetings between the mediator and each of the two parties separately. It is also generally required that the offender recognizes his role in the crime committed. Such recognition of responsibility is not to be confused with a formal admission or adjudication of guilt and cannot be used against the offender in a criminal trial.

Secondly, there are the victim-offender encounter programs (VOE). These involve surrogate victims and surrogate offenders who meet to witness of their experiences to one another, again in the presence of a mediator preparing each of the parties and facilitating the actual victim-offender meeting. These programs are useful for those victims who are not able to meet their own offender, for instance because they have not disclosed the offence to the police, because they are too afraid to communicate with him, or because their offender is not willing to meet with them (and vice versa for offenders who cannot meet with their own victim). These VOE's usually take place in the context of victim awareness courses for convicted offenders in prison (Liebmann, Wallis & Aldington, 2010). The opportunity to tell their story to surrogate offenders might in return have a favourable impact on participating victims.

Thirdly, the family group conferences (FGC) are a little more inclusive. These are inspired by New-Zealand indigenous practices and used in cases involving juvenile offenders. As its name suggests, these conferences do not only involve the victim and the offender but also their relatives, as well as a police representative and a facilitator. The offender, in

cooperation with his supporters, presents a reparative plan to the victim, after the victim was given the floor to describe the impact of the offence (Morris & Maxwell, 1998; Aertsen *et al.*, 2004).

Fourthly, since the 90's the use of sentencing and healing circles has become important in native communities in Canada. A sentencing circle includes the offender, the victim and their relatives, as well as any member of the local community who wishes to be present at the circle dealing with the offence committed and its consequences. These circles allow for the community not only to address the crime, but also the underlying causes, specifically those related to the community (Stuart, 1996). A judge also attends the sentencing circle, still holding the formal judicial decision-making power but allowing his decision to be inspired by the community, hence favouring a sentence that responds to the needs of the offender, the victim and the local community. While sentencing circles hold a direct and strong link with the dominant criminal justice system, the healing circles do not. Healing circles are focused on the reintegration of the offender and the victim in the community in particular and on rebalancing the social order in the local community in general. The healing circles allow for the community to have decision control with regard to the response to an offence, in contrast to the sentencing circles, which only allow for the community to have process control through its active involvement in the judge's search of an appropriate sentence (Jaccoud, 1999).

Fifthly, an even more holistic approach is adopted in the concept of the healing communities, such as the community holistic circle healing in the Canadian native community of Hollow Water, Manitoba. Local social service providers decided on a different approach to respond to various youth issues in their community, such as substance abuse, vandalism, and suicide. They found that these issues could be traced back to troubles in teenagers' homes and to unresolved intergenerational trauma from (sexual) abuse in the residential schools natives were placed in by the colonial forces. As a result, instead of

further developing initiatives that focus on the law infractions, which are noticeable but only signs of more fundamental issues, initiatives were taken to tackle the hidden problems in the community (Braithwaite, 1999; Ross, 2005).

Finally, also considered restorative practices, there are the Truth and Reconciliation Commissions. These have, for instance, been implemented in South Africa dealing with the consequences of Apartheid (Roche, 2002; Parmentier, 2004), and are being implemented in Colombia to deal with the guerrilla violence and kidnapping by the FARC, and in Canada, in 2010, to deal with the aforementioned forced assimilation of first nation children through placement in residential schools and the abuse that took place there.[3] A more indigenous variant is known as the 'Gacaca' in Rwanda, to respond to mass-victimization and genocide in this war-ridden and transitional country. Community members and victims are invited to attend meetings in which victims are given the opportunity to recount their experiences, and to suggest a suitable response to the offenders. The focus in these meetings is to find the truth about the events and to '*build a common memory of past atrocities* (Valinas & Vanspauwen, 2009, p.269)' to facilitate healing.

1.1.1.3. In search of a definition and position for restorative justice

Lack of a consensus on the definition but consensus on key elements

Despite a well established practice, as illustrated above, it seems impossible for restorative justice scholars to agree on a definition for restorative justice (Zehr & Mika, 1998; Van Ness, 2005; Shapland *et al.*, 2006; Wheeldon, 2009). '*Generally, it is much easier to identify a nonrestorative approach than it is to provide a precise definition of what*

[3] The last of these residential schools was closed as recently as 15 years ago, in 1996.

constitutes restorative justice (Latimer, Dowden & Muise, 2005, p.131)'. Restorative justice practice is clearly ahead of theory (Braithwaite, 1999; McEvoy, Mika & Hudson, 2002), as its definition remains elusive (Roche, 2002).

For lack of a consensual definition, the one proposed by Marshall in 1996 is currently the most widely accepted definition. It states that restorative justice is '*a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future* (Marshall, 1996, p.37)'. This definition accentuates voluntary participation and favours the process over the actual outcome (restorativeness). Some authors propose that the description of restorative outcomes is just as important. Bazemore and Walgrave (1999), hence, propose to approach restorative justice as an action oriented towards doing justice and repairing the harm done by the offence, rather than merely as a process in which victim and offender are given the opportunity to come to an agreement.

Marshall's definition would also imply the use of face-to-face meetings, while indirect forms of communication can equally be restorative. McCold suggests accepting restorative justice as a continuum; in his concept there is room for fully, mostly and partly restorative activities as they respond to the needs of all or part of the stakeholders (McCold, 2000; McCold & Wachtel, 2000). Fully restorative programs are programs in which victim, offender, their families and community representatives are present (*e.g.* family group conferencing, reconciliation groups); mostly restorative programs are programs in which one of these parties is missing (*e.g.* victim-offender mediation, victim-offender encounters, therapeutic communities for the offender); and partly restorative programs are focused on one of the parties' recovery or needs (*e.g.* victim support, community service, family-centred social work). Furthermore, McCold and Wachtel (2000) distinguish between direct (victim, offender and their respective families) and indirect (community) stakeholders, each playing a different, significant part in restorative justice. The role of the indirect

stakeholders is to support and facilitate a restorative approach for the direct stakeholders. All the while, the indirect stakeholders also benefit from restorative justice, namely through the development of a collective problem-solving capacity and increasing strength of the civil society through involvement in conflict resolution procedures. While recognizing that fully restorative programs are not always an option (due to *e.g.* refusal of participation by the victim or offender), McCold and Wachtel (2000) demonstrate, with empirical data gathered from surveys with victims and offenders, that the fully restorative programs are the most beneficial on their scale of 'restorativeness'. Their empirical data set, however, concerns juvenile offender programs mainly. Also, their operationalization of the dependent variable of 'restorativeness' is restricted to participant satisfaction and does not include a concrete outcome-oriented indicator and therefore, seems incomplete.

The lack of a consensual definition of restorative justice is rather problematic because it favours the development of myths around the concept of restorative justice (McCold & Wachtel, 2000; Daly, 2002), as would the insistent reference to its indigenous roots (see 1.1.1.1.). The lack of a definition of restorative justice also complicates its evaluation. While a theory of restorative justice needs to leave sufficient manoeuvre space for diverse restorative instruments, *e.g.* ranging from fully to partly restorative interventions, one has to be wary of too many grey zones. Not having a clear definition, restorative justice risks becoming overstretched or an umbrella concept (Shapland *et al.*, 2006; Woolford & Ratner, 2010). Also, considering that its practice was already thriving prior to theory-development (Roche, 2002), it is possible that not all interventions stick to the restorative justice label (Roche, 2006). Hence, restorative justice risks losing its particularity and meaning and becoming a hollow concept covering a multitude of practices that do not necessarily respond to the key restorative elements as long as there is no consensual definition (Zehr & Mika, 1998).

Fortunately, there is a consensus on the basic principles of what is restorative justice. According to Umbreit *et al.* (2006a) '*(t)hough there are many definitions of restorative justice, its core value is the conviction that the persons or entities most directly involved in a crime are the ones who should be central in responding to the harm caused by the crime* (Umbreit *et al.*, 2006a, p.28)'. Scholars agree that restorative justice represents a new approach to crime. In contrast to the conventional justice system, it views crime as an injury or a conflict (rather than as an infraction of the law), and consequently, the purpose of justice is conciliation and healing (rather than punishment). Restorative interventions favour the facilitation of participation and communication between the parties involved, hence favouring the development of a solution to the crime and its consequences that satisfies all parties. The accountability of offenders to make amends, and support to the victims and ultimately, the successful reintegration of both in a safe community is central to restorative justice (Van Ness, 1997; Van Ness & Heetderks Strong, 1997). Or as Zehr and Mika (1998) state: What distinguishes restorative justice from other models is that it sees crime as a violation of interpersonal relationships; these violations create obligations for making amends and finding healing solutions. Restorative justice has therefore, been referred to as a compassionate approach (Braithwaite, 1999), a new lens to look at criminality (Zehr, 1990), a means to making amends and making good (Wright, 2008a), a new philosophy of justice (Wright, 2008b), an application of a peacemaking justice model (Pepinsky, 2006), a way to humanize justice (Umbreit, Coates & Vos, 2002), a model between reactive penal justice and proactive social policies (Boutellier, 1996), or, on an even more general note, a social movement (Liebmann, 2007). Or as Cohen (2001) puts it:

> 'Depending on whom you ask, restorative justice is a concept, a theory, or a social movement. It is also, variously, "new wine in old bottles", "atavistic", and "fundamentally misguided", or revolutionary, immensely promising, and transformative (Cohen, 2001, p.209)'.

According to Roche (2001) it might prove to be more useful to focus on the key elements in the restorative process and on restorative values instead of trying to define restorative justice. With this in mind, the following elements are constitutional and indispensable to restorative justice:

- Crime is seen as a conflict or injury
- Communication ('*come together and resolve collectively*'): (direct or indirect) communication in a safe environment, facilitated and supervised by a neutral third party, in which mutual respect and opportunity for the expression of concerns are essential
- Involvement ('*come together*')
- Victim (and supporters), offender (and supporters) and community as the central parties
- Reparation ('*resolve how to deal with the aftermath of the offence*'): material or symbolic reparation of the damage caused by the offence
- Conflict resolution ('*resolve how to deal with its implications for the future*') and ultimately and ideally peacemaking as it does not only address the immediate issue at stake but also the eventual underlying issues

Restorative justice as a replacement or as a complement to the criminal justice system?

Parallel to the search for a definition, scholars are still in disagreement as to the position that restorative justice should ideally occupy in relation to the criminal justice system. Some argue that it can and should replace the retributive criminal justice system and its focus on punishment; others argue that it can only complement the criminal justice system.

Some abolitionists considered restorative justice a worthy replacement for the retributive model. Referring to Kuhn (who introduced the idea of a paradigm shift in human science), Fattah (2004) argues that the only way to allow victims to be involved and be empowered, and at the same time ameliorate the criminal justice system, is a shift from the retributive to the restorative justice paradigm. Moreover, Fattah strongly opposes the integration of

restorative justice in the conventional criminal justice system because of the danger of co-optation. He calls it '*naïve*' to belief that restorative justice can be implemented through pilot-projects and small-scale experiments within the conventional system, since judicial authorities, such as prosecutors, will not readily refer cases to restorative justice programs. The retributive criminal justice system cannot be changed from within; it needs to be replaced altogether (Fattah, 2004). True innovation of the penal system can only be accomplished by introducing restorative justice as a replacement rather than a complement (Jaccoud, 2007a). Hulsman (1986) would agree. According to the Hulsmanian abolitionism, the criminal justice system (1) reduces human conflict, which is a normal phenomenon in society, to crime, (2) steals conflicts from the direct stakeholders (see also Christie, 1977), and (3) only strives to produce suffering instead of reducing it (Slingeneyer, 2005). These issues might be resolved if restorative justice replaces the dominant criminal justice system as it personalizes the conflict instead of reducing it to an infraction, favours and facilitates the dialogue between the direct stakeholders and strives to resolve the conflict and reconcile the parties involved.

Other scholars insist that restorative justice only complements the conventional criminal justice system. Also within this discourse there are different views. Often, the position restorative justice proponents occupy within this perspective of restorative justice as complementary is referred to as a minimalist versus a maximalist approach. The minimalist approach refers to restorative practices being developed *independently* of the criminal justice system, while the maximalist approach stands for the *integration* of restorative practices *within* the criminal justice system and hence changing the dominant justice system from within (Walgrave, 2001). The opposition between these two approaches has been linked to the debate concerning the need for an outcome-oriented definition of restorative justice (which represents the maximalist approach in which restorativeness should replace punitiveness) or a procedure-oriented definition (which represents the minimalist approach because it focuses on participation and communication irrespective of its impact on judicial

decision-making) (Van Ness, 2002; Jaccoud, 2007a). The entire minimalist-maximalist polemic has become rather convoluted and the terms of minimalism and maximalism are in themselves confusing: minimalism does not imply that the practice should not be used to the maximum and maximalism is not synonymous with abolitionism but often confused with it.

Van Ness (2002) presents an alternative classification (see also Bosnjak (2007) for a discussion of this classification). He describes four possible relationships. First, restorative justice could entirely replace the criminal justice system and thus be the only available justice model (in other words representing the unitary or abolitionist approach as defended by Fattah). Second, Van Ness describes the dual-track model in which restorative justice and the criminal justice system could co-exist independently with passages between the two systems to allow parties to move back and forth. This model implies that the restorative and traditional procedures as well as outcomes do not exclude each other. In other words, restorative measures and outcomes are not diversionary. Third, in a hybrid approach the traditional criminal justice system is partly replaced by a restorative intervention. Traditional proceedings could, for instance, still be used for the adjudication of guilt, but as soon as guilt is ascertained, the restorative justice system takes over (Christie, 1977). In this approach, restorative justice is not a mechanism for evidence production and adjudication but is a replacement for the retributive sentencing regime in which only a restorative outcome is possible, replacing a punitive one. Fourth, in a safety-net model, restorative justice could be the initial response to crime, while the traditional criminal justice system operates as a back-up system or as a last resort. If a restorative intervention is successful, it replaces the need for a criminal justice procedure and outcome. In contrast to the dual-track approach, a restorative measure can be diversionary in the safety-net approach. It resembles Braithwaite's responsive regulation theory (Braithwaite, 2006, 2007). The central idea here is that one has to respond to every infraction in a proportionate way, instead of neglecting or overreacting to offences. Restorative justice is the preferred option at the base of the

regulatory pyramid. If it fails, the case moves up the pyramid and another procedure is applied. '*Such responsive justice pyramids cover the weakness of one strategy, with the strengths of other strategies higher up the pyramid, including more deterrent and incapacitative options* (Braithwaite, 2007, p.694). According to Hartmann (2007), the justice system is indeed needed as a last resort for those cases that could not be settled through a restorative intervention and for which a third-party intervention is required. The criminal justice then also provides legal safeguard for the application of restorative justice practices. The criminal justice system specifies which acts are considered infractions, adjudicates responsibility and serves as a benchmark for a reasonable agreement between the victim and the offender. In this perspective, restorative justice '*can replace the priorities of the current system so that the goal of restoration may become not simply a new feature of the conventional system, but an overarching goal of criminal justice* (London, 2006, p.415)'.

1.1.2. Restorative interventions evaluated

The restorative instruments have been subjected to many evaluative studies of various designs. Certain studies are more profound and efficient than others (Bonta *et al.*, 2002) as they range from purely anecdotal accounts to rigorous comparative designs, including random assignment experiments (Latimer, Dowden & Muise, 2005; Sherman *et al.*, 2005). '*Despite the intuitive appeal of restorative justice, it is imperative to fully evaluate the impact of this approach on several important outcomes* (Latimer, Dowden & Muise, 2005, p.129)'. Indeed, if restorative justice were to replace or at least be considered as a valid complement to the dominant justice procedures, it must be proven worthwhile (Bosnjak, 2007). The results of the evaluative studies are very encouraging. Restorative practices seem to have a positive impact on both the offender and the victim and they generate high satisfaction rates. Restorative justice has been more successful than the traditional criminal

justice procedures on different accounts (Braithwaite, 1999; Strang & Sherman, 2003; Poulson, 2003; Latimer, Dowden & Muise, 2005).

1.1.2.1. The link between restorative interventions and desistance from crime

Criminologists evidently want to know whether restorative justice can be associated with desistance from crime. The answer to that question is far from straightforward. Results from European and North American studies regarding the impact of restorative justice on recidivism are inconclusive (Lemonne & Idle, 2010).

Latimer, Dowden and Muise (2005) conducted a meta-analysis of 22 quantitative studies on restorative programs, 75% of which were related to juvenile offenders, in which the effects of restorative interventions were compared with those of traditional justice procedures on reoffending, among other outcome variables. They found a significantly positive relationship between the participation in a restorative program and desistance from crime. However, in their outcome-evaluation of Canadian diversionary restorative programs, concerning non-violent offences committed by adults, Bonta *et al.* (2002) did *not* find reduced recidivism rates associated with restorative justice. Sherman and Strang (2007) note that evaluative studies generally indicate a positive impact of restorative programs on recidivism in cases of violent crime, as opposed to inconclusive results as far as non-violent crime cases are concerned. Maxwell and Morris (2002) found that the effect of participation in Family Group Conferences on reconviction was not worse than criminal justice results. Nevertheless, Bonta *et al.* (2002) as well as Maxwell and Morris (2002) found that offenders perceived the restorative interventions to be fairer and more satisfactory. For that reason alone the restorative approach should be considered a viable option (Bonta *et al.*, 2002; Strang & Sherman, 2003).

Latimer, Dowden and Muise (2005) point out that participating in a restorative intervention

is voluntary and requires offenders to accept responsibility in the offence. It could then be expected that these offenders are more likely to benefit from the restorative intervention. They call this the self-selection bias. They also find it '*naïve to believe that a time-limited intervention such as victim-offender mediation will have a dramatic effect on altering crime and delinquent behaviour* (Latimer, Dowden & Muise, 2005, p.139)'. Other interventions, such as offender treatment programs, have to be taken into account as well when studying the impact of restorative justice on recidivism (Latimer, Dowden & Muise, 2005). Unfortunately, the effectiveness of including offender treatment programs in a restorative intervention cannot be measured due to the lack of appropriate practice (Bonta *et al.*, 2006). However, it is possible to measure where offenders stand on desistance prior to participation in a restorative intervention, which is what Shapland *et al.* (2008) did. They found that offenders who agree to participate in restorative justice were '*on the cusp of trying to desist* (Shapland *et al.*, 2008, p.42)', which is in line with the self-selection bias. The meeting with the victim was additional encouragement for the offenders to continue their course to desistance from crime (Robinson & Shapland, 2008).

1.1.2.2. Restorative practices assessed by victim-participants

The evidence regarding the impact of restorative interventions on victims is generally very positive. Comparative research findings show that victims are more likely to get compensation for their material damages or symbolic reparation following a restorative intervention rather than in the criminal justice system. Restitution and agreement compliance are high (Braithwaite, 1999; Latimer, Dowden & Muise, 2005).

In an attempt to falsify victim advocates' fear that restorative justice augments victim distress, Wemmers and Cyr (2005) found that restorative interventions could be therapeutic. Gustafson (2005) also recognized this therapeutic impact in his description of the encounters of victims of severe violence with convicted and imprisoned offenders in

Canada. This is in line with the results of a quasi-experimental, repeated-measure research conducted by Rugge and Scott (2009). They evaluated two Canadian VOM programs, applied in serious and minor violent offences, and found a positive impact on the fifty interviewed victim-participants' psychological well-being, using both subjective and objective before and after psychological indicators (this was also observed with interviewed offender-participants). Strang *et al.* (2006) ran four randomized controlled trials with face-to-face restorative justice programs in the UK and in Australia and conducted retrospective interviews with the victims of property and violent offences about their feelings of satisfaction and recovery. They found that face-to-face restorative justice programs held substantial benefits for victims of crime as their level of fear and anger had reduced. The victims even developed sympathy towards the offender, which was, however, not a precursor for forgiveness. Using the same randomized trials as Strang *et al.* (2006), Angel (2008) demonstrated that participation in a restorative intervention had a significant impact on the reduction of PTSD. Victims have credited restorative interventions for providing relief (Strang *et al.*, 2006) and closure (Shapland *et al.*, 2007). In this sense, restorative interventions allow and favour emotional reparation, which is what victims are looking for but do not consistently find in the criminal justice system (Strang *et al.*, 2006). Note that these positive observations have been described in cases of property as well as violent crime.

Of the victims that accepted the offer, only a minority reports a negative effect (Wemmers & Canuto, 2002). There have been accounts of augmented fear due to confrontation with the offender (Braithwaite, 1999; Wemmers & Canuto, 2002; Wemmers & Cyr, 2004; Daly, 2004). This is true for a minority of victim-participants only, but it cannot be neglected. It has to be respected that restorative justice, even as a voluntary and complementary offer, is not an option for every victim. However, to date there are no tools that can predict which victims might be more likely to benefit from a restorative intervention (Sherman & Strang, 2007), as it is equally impossible, theoretically and empirically, to predict which victims

will deal with a problematic recovery and potentially suffer from traumatic stress, although victims of crime against a person are more likely to be traumatized (Shapland & Hall, 2007). Some scholars plead, for instance, to exclude victims of domestic or sexual violence from restorative practices, because they cannot provide the safety these victims primarily need (Stubbs, 2002; Herman, 2005). One must, however, not ignore the intense preparation of both the victim and offender by the mediator (instead of it being a one-time event as Stubbs describes it) and that it does not necessarily involve a direct confrontation with the offender due to the possibility of shuttle mediation. One might instead argue for the importance of informed consent and restorative justice as a choice, leaving the decision to participate to the victim, regardless of the type of offence concerned (Van Camp, 2010). Not every victim will be interested in the offer, but might prefer the opportunity to refuse the offer, instead of not knowing about it at all. Such an approach would require complete, honest and realistic information about the offer and its execution in order to allow victims to make an informed choice. Also, victims are interested in the restorative offer (Wemmers & Canuto, 2002). Hence, the negative effects on some victims should not serve to reject the entire model. Daly (2004) adds that the traditional criminal justice system is known to produce secondary victimization and this to a larger extent than the restorative approach. Restorative programs are hence the least problematic in potentially causing secondary stress and the better of the two options.

In any case, there is plenty of evidence that those victims who accepted the offer (as well as offenders) are very satisfied with their participation in a restorative program (Shapland *et al.*, 2007). While quantitative researchers in the restorative justice field view satisfaction as a poor measure for restorativeness and the effectiveness of restorative programs (Bonta *et al.*, 2002; Latimer, Dowden & Muise, 2005; Rugge & Scott, 2009), Braithwaite (1999) views it as a valuable proxy for restorativeness. Whatever the case may be, the restorative interventions are generally found to be more satisfactory compared to the traditional judicial procedures (Sherman & Strang, 2007). In their meta-analysis of 22 quantitative

evaluative studies, Latimer, Dowden and Muise (2005) found only one study in which satisfaction was higher with traditional procedures than with the restorative program, and this both for the victim-participants as for the offender-participants. Umbreit, Coates and Vos (2002) demonstrated high satisfaction with restorative measures across multiple sites and cultures and for any offence type. Many victims even indicated that they would do it again and recommend it to others (Braithwaite, 1999; Umbreit, Coates & Vos, 2002), which is another sign of positive assessment.

Again, Latimer, Dowden and Muise (2005) warn that the self-selection bias impacts the positive results regarding victim satisfaction: the fact that victims voluntarily choose to participate might indicate that they are more likely to be satisfied, *e.g.* because they are more receptive to alternative measures and to the programs' alternative fundaments. However, Strang *et al.* (2006) note that 50% to 90% of the victims they had *randomly* assigned to a restorative program in the UK and in Australia accepted to take part, a fairly high ratio which might counter the idea that victims who take part in a restorative intervention have a certain inclination towards informal and restorative dispute resolution. Latimer, Dowden and Muise (2005) themselves also acknowledged that even if there is a self-selection bias, this does not reduce the evidence that victims who choose to participate, are indeed more satisfied with the restorative approach than with the traditional criminal procedures.

The appreciation of the restorative approach by victims of crime adds to the burden of proof for the establishment of the restorative approach as valuable and viable (Strang & Sherman, 2003; see also Morris, 2002; Braithwaite, 2007). As long as there is no evidence that restorative practices increase recidivism more than the traditional criminal justice system, at least '*there is a clear victim benefit returned on investment in restorative justice*' (Strang *et al.*, 2006, p.304), and that is equally important as the impact on the offender's behaviour.

1.1.2.3. Looking for an explanation for victim satisfaction with the restorative approach

While there is plenty of consideration given to the theoretical explanation of the impact of restorative justice on desistance from crime, '*the RJ hypothesis on victim benefits has been almost a theoretical afterthought* (Sherman *et al.*, 2005, p368)'. The self-selection bias proposed by Latimer, Dowden and Muise (2005), used to tone down the positive results regarding victim satisfaction, does not *explain* why victims that accepted to take part in a restorative intervention were satisfied with it. It is also often interpreted as an indication that victims that choose to participate have a certain predisposition to be satisfied with it. In this perspective, restorative justice risks becoming a model that is merely successful because it is used by victims that are bound to like it. Their evaluation of the offer would then be rather prospective than retrospective. This concept is inadequate; there must be a more encompassing theoretical explanation.

In one of the earliest evaluative studies, *i.e.* Umbreit's work in 1989 and 1994, there were indications on why victims liked the restorative program they attended. They appreciated the fact that they had been treated with respect, they had the opportunity to participate in the search for a solution, they had been able to express themselves, the mediator was fair and supportive and the outcome was just. Furthermore, Wemmers and Cyr (2005) demonstrate that one cannot unconditionally compare restorative justice and the conventional criminal justice: to start up a restorative justice meeting, the offender has to recognize his responsibility in order to participate and in restorative justice, there is no cross-examination of the victim as key witness, a major source of stress for victims in the traditional justice system. Umbreit *et al.* (2006a, 2006b) also found that the preparation for the victim-offender meeting, another processual factor, in itself was instrumental for victims and offenders in their evaluation of satisfaction. They also found that participants appreciated the respectful dialogue with the offender as well as the mediator's

unobtrusiveness or neutrality. The importance of mediator's attention to the complainant was also observed by Pruitt *et al.* (1993) as a factor for long-term success of community mediation. Moreover, it has been demonstrated that victims' discontent with the criminal justice system is not related to the leniency of the punishment, but to the undesirability of the criminal justice procedures, *e.g.* by allowing too little involvement (Strang & Sherman, 2003; Parsons & Bergin, 2010).

In other words, the satisfaction of victims is most likely not only related to the appreciation of the outcome, but also to the favourability of its procedure, a topic that has been meticulously investigated within the framework of the procedural justice theory. Other restorative justice scholars have also made the connection with procedural justice and started to include variables measuring procedural fairness in victim questionnaires regarding restorative justice (*e.g.* Wemmers & Cyr, 2004; Sherman *et al.*, 2005; Shapland *et al.*, 2007). Umbreit (1989) already suggested that crime victims are '*seeking fairness, not revenge*'. The procedural justice theory might, therefore, be useful in explaining victim satisfaction with restorative justice.

1.2. On procedural justice

1.2.1. From distributive justice to procedural justice

The procedural justice theory is a well-established and empirically sound model to explain and predict the assessment of justice or fairness (both terms being synonymous) by the protagonists in different conflict scenarios, such as the victim and offender of a crime. This theory belongs to a long tradition of social-psychological studies identifying what makes conflict resolution fair (for comprehensive overviews of justice studies see Vermunt & Törnblom, 1996; Machura, 1998; Lerner, 2003; Hegtvedt, 2006).

In the 60's, justice studies focussed on the fairness of the dispute resolution's outcome, referred to as distributive justice. It was concerned with the fair distribution of goods and conditions affecting individual well-being (Deutsch, 1975). Inspiration was found in the relative deprivation theories, that emerged after World War II and targeted the allocation of scarce resources (a criminological illustration of which is found in Merton's general strain theory) (Tyler, 1987a), as well as the equity theory and the notion that people are looking to maximize their economic interests (Skitka & Crosby, 2003). In this perspective, dispute resolution in any type of conflict is only just if the allocation of goods, rewards and punishments is proportionate to the disputant's input and contribution to society, in other words reflecting a fair input-output balance. While distributive justice research was dominated by the equity model, Deutsch (1975) argued that the economic equity-value is not the only distributive justice motive to be taken into consideration. Deutsch described different justice motives and he assumed that the dominance of one motive over other conflicting motives depends on the objective of the relationship in which a dispute occurs.

If economic productivity is envisioned, the prevailing distributive value is equity. If the goal is to maintain an enjoyable social bond, the dispute resolution will be judged on its equality. The outcome-assessment will be needs-based if the disputants are looking for personal development and welfare.

Thibaut and Walker (1975, 1978) successfully added a procedural dimension in the social-psychological justice studies. They have been labelled the founding fathers of the procedural justice theory for this achievement. Other scholars had already indicated the importance of procedural effects on the outcome-assessment, but Thibaut and Walker were the first to build a theory around it and provide a framework to fit these ex-ante observations (Lind & Tyler, 1988). Distributive justice, which focuses exclusively on the qualities of the outcome for the assessment of satisfaction, did not adequately explain the fairness in the resolution of social conflicts (*e.g.* crime), while it seemed pertinent in other types of conflicts (Tyler, 2000a). Thibaut and Walker designed laboratory experiments measuring the effects of different adjudicatory procedures on objective and subjective assessments of dispute resolution events and outcomes (Thibaut *et al.*, 1974; Thibaut & Walker, 1975; Thibaut & Walker, 1978; Lind & Tyler, 1988). Objective fairness concerned the accuracy of the information available to the decision-maker. The subjective fairness was synonymous with the perception of fairness by the participants (subsequently the focus of later procedural justice research, Hegtvedt, 2006). '*One of the most striking discoveries of the Thibaut and Walker research group was the finding that satisfaction and perceived (i.e. subjective) fairness are affected substantially by factors other than whether the individual in question has won or lost the dispute* (Lind & Tyler, 1988, p.26)'. In other words, they were the first to present evidence that outcome-satisfaction does not tell the whole story of perceived fairness since procedural variation independently affects fairness assessment.

The Thibaut and Walker research team continued to lab-test the preference of American university students for adjudication procedures, used in legal conflicts (either civil, administrative or criminal), ranked by progressively decreasing degrees of control by third-party decision-makers (respectively various inquisitorial and adversarial procedures), thereby respecting the ranking made by their respondents. They found a significant preference for the adversarial procedure, *i.e.* the procedure that allows the most control to respondents in both advantaged or disadvantaged disputant roles (Thibaut *et al.*, 1974; Thibaut & Walker, 1975). In their general theory on procedural justice, Thibaut and Walker (1978) further modified the preference for adversarial versus inquisitorial adjudication dependent on the objective of the dispute. In a conflict of interests (*e.g.* a legal dispute) disputants look for justice, while in a cognitive conflict (*e.g.* a scientific debate) disputants look for the truth. They found that while adversarial procedures are favoured in conflicts of interests, inquisitorial procedures are more adequate in settling cognitive disputes. They also observed the preference for adversarial adjudication in legal conflicts in a cross-national experimental study repeating their experiment in order to control for the impact of culture-specific preferences for adversarial procedures by American respondents, as these form the basis for the American legal system (Thibaut & Walker, 1975).

The universal tendency to prefer adversarial regimes in legal disputes was not confirmed in European research projects. Anderson and Otto (2003) found, in their study with American and Dutch respondents, that '*while the adversarial system was rated significantly higher on the likelihood that all evidence will be presented, and the likelihood that both the victim and the defendant will get an opportunity to voice their case, people showed a clear preference for their own system* (Anderson & Otto, 2003, p.557)'. Similarly, Machura (2003) observed that Russian respondents, based on actual experiences with court proceedings, preferred the inquisitorial regime. Anderson and Otto (2003) point out that the description of the adversarial and inquisitorial procedures in Thibaut and Walker's laboratory setting were 'pure' or ideal forms of these procedures, while in actual court

practices the actual procedures do not correspond with these pure forms. In other words, Thibaut and Walker's findings regarding their subjects' preference for an adversarial adjudication could have been due to the specific research methods used and the artificial impact of laboratory experiments (which they themselves acknowledge; Thibaut & Walker, 1975) instead of experience-based surveys (see also Lerner (2003) for his critical analysis of the research methods used in justice research and their impact on research results).

Anderson and Otto (2003) suggest referring to particular features of various procedures as preferable rather than to the specific procedures as such. According to Thibaut and Walker, what distinguishes adversarial procedures from others is the degree of control given to third-party decision-makers and the disputants (Thibaut & Walker, 1975, 1978). Hence, the distribution of control, seen as a scarce resource, is the best predictor of perceived fairness (Thibaut & Walker, 1975). A procedure that limits third-party control is considered just, irrespective of its outcome. They further discriminate between decision control, *i.e.* control over the verdict, and process control, *i.e.* control over the presentation of arguments (Lind & Tyler, 1988). Fundamentally, people prefer bilateral conflict resolution procedures, but are willing to delegate decision control to a third party whenever necessary (*e.g.* when there are non-correspondent interests), as long as disputants maintain process control. In this sense, giving up decision control is not synonymous with giving up process control.

In sum, Thibaut and Walker greatly contributed to the idea that procedural elements have a significant impact on the assessment of fairness of dispute resolution procedures, regardless of the achieved outcome. Discontent with an undesirable decision is less pronounced if it was reached through a fair procedure (Tyler & Folger, 1980). Consequently, decision-making authorities (whether judicial authorities or policy-makers) can improve public satisfaction with potentially unfavourable decisions through the redesign of decision-making procedures (Lind & Tyler, 1988).

1.2.2. From an instrumental to a normative justice motive

Thibaut and Walker were able to divert the focus in fairness research away from mere distributive justice ('fair outcome') by establishing that procedural factors play an important role in fairness assessment and that the influence of the procedure on satisfaction is independent of the satisfaction with the outcome ('fair outcome through fair procedure'). However, their explanation for the preference of procedures favouring maximum process control does not differ from the distributive justice motive, *i.e.* an instrumental motive. In their concept of procedural justice, the desire for a fair procedure serves the need of ensuring a fair outcome (Hegtvedt, 2006). The underlying motive for a favourable assessment of a procedure depends on it maximizing one's chances for a favourable outcome. In this perspective, in order to maximize one's chances for a fair outcome, one needs to have process control (and preferably also decision control) (Lind & Tyler, 1988). It also seems that only one disputant can come out as a winner, as the instrumental motive disfavours win-win situations.

Subsequent procedural justice studies shifted away from this instrumental approach to justice. Instead of seeing the procedure as a means to an end, procedural justice scholars started to view it as an end in itself (Tyler & Folger, 1980). It was observed that disputants look for process control *regardless* of its potential impact on the outcome (Tyler, 1994). Disputants were not only found to be looking at maximizing their chances for a desirable outcome by maintaining process control, but they valued the process control, *i.e.* the opportunity to present arguments, in itself, regardless of its influence on the outcome. These observations cannot be explained by purely instrumental motives.

Therefore, Lind and Tyler (1988) replaced the instrumental model with the group-value model, which was later relabelled the relational model (Tyler & Lind, 1992). Fairness is not important because it serves to ensure a favourable outcome, but because it reflects whether

one is valued as a member of the group. It serves a normative rather than an instrumental purpose. Disputants are concerned with how they are viewed by other members of society, and this image impacts their self-esteem (Smith & Tyler, 1996). Fair treatment by key representatives of a group indicates whether the group respects the disputants (Smith *et al.*, 1998). '*The relational model links concerns about justice to concerns about the social bonds that exist between people and groups. (…) These bonds extend beyond the immediate issue or problem that is being dealt with* (Tyler, 1994, p.851)'. These bonds need to be maintained because they are a source of self-validation (Tyler, 1994). In contrast to the instrumental model of procedural justice, the group value model assumes that disputants are concerned with long-term relationships with decision-makers, since they are representatives of the group (Tyler, 1989). In a fair procedure, one is looking for social esteem, social identity and standing in the group, even if it goes against one's own interest and a favourable decision (Bora, 1995), versus the centrality of self-interest in the instrumental model of procedural justice. When identification with the group is high, *e.g.* when one counts himself among the same culture as the authority, one is more strongly affected by procedural justice (Tyler, 2000b; Clayton & Opotow, 2003).

While there already were indications in the distributive justice theory that individual well-being serves the good of the group (see Deutsch, 1975), the group-value did not appear to guide the theory on individual assessment of fairness before the establishment of the group-value model of procedural justice. Furthermore, as opposed to the instrumental justice model, no one loses in the group-value or relational model, since a fair procedure serves both disputants and the group, and disputants do not necessarily strive to win the dispute but to solve it fairly (Tyler, 1994). Finally, Tyler (1994) found that disputants also use normative motives, in combination with instrumental ones, to assess distributive fairness, while procedural fairness assessment is shaped by normative means only. In other words, in relation to both the outcome and the procedure '*people are tempering their desire to*

maximize their short-term self-interest with a realism about the demands of social interaction (a long term objective) (Tyler, 1994, p.858)'.

With the introduction of the normative justice motive, the procedural justice theory developed beyond its initial scope of explaining fairness. Following the findings on the reaction to perceived fairness and unfairness, procedural justice found its place among compliance theories, offering insight into '*why people obey the law* (Tyler, 2006a)'. It became a valid alternative for the predominant deterrence theories in criminology. Due to the acceptance of the decision resulting from a fair procedure, future behaviour towards the decision-maker is more likely to be positive and loyal. For instance, in the work setting, employees who felt they were treated fairly by their employers were less likely to take legal action against their employer following an undesirable managerial decision (Bies & Tyler, 1993). This effect equally stands with regard to desistance from crime (Tyler, 2006b). For instance, in a research study regarding police interaction in domestic violence, Paternoster *et al.* (1997) found that when police officers acted in a procedurally fair manner towards the offender, the likelihood of subsequent violence was significantly lower. When people feel respected and treated fairly, they are more likely to produce group-serving behaviour, such as compliance to the law. In other words, procedural fairness not only encourages disputants to accept the outcome of a resolution procedure, but also promotes commitment and loyalty (Tyler, Degoey & Smith, 1996) through the perceived legitimacy of authorities and institutions. While deterrence theories state that obedience to the law is related to people wanting to avoid punishment, which is a self-interest or instrumental explanation (*e.g.* stopping for a red traffic light because one wants to avoid getting a fine), the procedural justice theory and its group-value model offer a normative explanation: people obey the law, irrespective of the negative consequences of a violation of the law, because they voluntarily accept it (Tyler, 2006b) when the law is fairly established and executed (*e.g.* stopping for a red light because traffic lights prevent drivers from having accidents).

One might even prefer to speak of '*acceptance*', in the sense of voluntary compliance, instead of mere compliance (Tyler & Huo, 2002).

1.2.3. The cushion of support and the consistency rule

The introduction of the normative justice motive helped to fine-tune Thibaut and Walker's 1978 general theory of procedural justice. Procedural justice research was also taken outside the laboratory and tested in real life, collecting experience-based observations through surveys. For instance, Casper, Tyler and Fisher (1988) verified the validity of the procedural justice in settings where individual stakes were truly high, *i.e.* in felony cases, as opposed to artificial lab tests. Their findings strongly suggested that the relevance of procedural fairness is not only high in re-enactments, but also in real life felony cases, countering the critique that procedural justice would only matter in cases where real stakes were not involved.

Also, the courtroom setting observations made by Thibaut and Walker were complemented with data from other areas, such as police encounters (*e.g.* Tyler & Folger, 1980; Tyler & Wakslak, 2004), work environments (*e.g.* Lind, Kray & Thompson 1998), general interpersonal settings (*e.g.* Mikula, 1993) and policy-making (*e.g.* Smith & Tyler, 1996; Sunshine & Tyler, 2003; Tyler, 2005). Furthermore, diversionary measures were studied more prevalently (Tyler, 1987a, 1987b), as well as non-dispute encounters, since contact between citizens and authorities is not always conflict-related but might simply be related to informative needs (Tyler & Folger, 1980).

Multiple procedural justice studies consequently confirmed the relevance of procedural fairness regardless of the desirability of the outcome. One of the strongest empirical findings illustrating and confirming the relevance of procedural fairness is the '*cushion of*

support' effect (Lind & Tyler, 1988). Findings demonstrated that conflicting parties were satisfied when both the outcome and procedure were deemed fair, and, more surprisingly, when the procedure was fair and the outcome was not. The negative evaluation of the outcome affected the overall assessment, but to a significantly lesser degree than should the unfavourable outcome have resulted from an unfavourable procedure, and did not result in a negative overall assessment. In other words, a fair procedure could make an unfavourable outcome palatable (Lind & Tyler, 1988). This does not imply, however, that people are not looking for fair outcomes. '*A procedure that consistently produces unfair outcomes will eventually be viewed as unfair itself* (Tyler, 2006a, p.164)' (countering Rawls' (1971) concept of 'pure' procedural justice in which a fair procedure legitimizes any outcome, whether fair or unfair; Rawls (1971) as referred to in Machura, 1998).

Similarly, procedures that are misrepresented as fair, and do not in reality provide any input (process control) for the disputants, are not satisfactory and a cause for frustration, hence, named the frustration effect by Folger (1977). This can be explained by false expectations about procedures one engages oneself in. Expectations are created by earlier experiences, by comparing with others' experiences, or based on the *a priori* information about the procedure. Van den Bos (1996) found that such expectations have a strong impact on the assessment of fairness. He found that not only process control leads to fairness, but also consistency with one's expectations and the information given about the procedure, known as the consistency rule (Leventhal 1980, as referred to by Van den Bos, 1996). If process control was promised, but subsequently not provided, the fairness assessment was unfavourable; also, surprisingly, when the disputant was informed that he would not have process control, and then was subsequently given process control, the disputant was less satisfied. Respondents that had not been given any information on what to expect, were more satisfied when given process control. The process control effect had been established as robust (*i.e.* people always preferring process control over no process control; however, Van den Bos' observations suggest that the consistency effect might be stronger (Van den

Bos, 1996; Van den Bos, Vermunt & Wilke, 1996). This is related to what Greenberg (as cited in Van den Bos, 1996) referred to as proactive procedural justice, *i.e.* disputants expect a procedure to be fair and therefore, base their assessment on such expectations, as opposed to reactive procedural justice, *i.e.* disputants judging the fairness of a situation that they have been through and therefore, base their assessment on actual experiences. There is also an interesting similarity between Van den Bos' observations and Symonds' secondary victimization construct (Symonds, 1980): victims have unspoken expectations regarding their treatment. When these are not met, victims tend to feel revictimized.

1.2.4. The articulation of procedural determinants

Lind and Tyler (1988) argue that Thibaut and Walker did not intend to develop a theory of subjective fairness; they evaluated *which* procedure was preferable given certain circumstances, but did not attempt to describe *how* people evaluated procedural fairness. Thibaut and Walker's research team found that disputants prefer a procedure that fairly allocates control between the disputants and the third party decision-maker and provides disputants with process control. They adopted the instrumental justice motive and portray disputants as self-interested actors. Procedural justice scholars who adopt the relational approach for procedural fairness put forward value-expressive determinants of procedural justice.

Inspired by Thibaut and Walker's control model and Leventhal's work, Tyler (1988) conducted surveys with citizens about their formal and informal encounters with the police and court, and checked the relevance of representation, consistency of decisions, impartiality, decision-accuracy, correctability and ethicality. These criteria had not been subjected to empirical scrutiny (Blader & Tyler, 2003) and, therefore served mainly as a preliminary guideline for Tyler's 1988 study. Apart from finding that both distributive and

procedural justice assessments mattered to the respondents, with procedural assessment being significantly more important (see 1.2.6. for more information on the relationship between distributive and procedural justice), Tyler also found that procedural determinants which were least related to the outcome, *i.e.* ethicality, honesty and the decision-maker's effort to be fair, were most significant in assessing procedural fairness (Tyler, 1988). Later, procedural determinants were categorized under standing and respect, trust and neutrality (Tyler & Lind, 1992), but were in subsequent procedural justice studies frequently renamed and re-categorized. A multitude of empirical tests of the relational model of procedural justice measured a large variety of potential criteria for procedural fairness. Reformulation and relabeling are common and frequent in these studies (Colquitt, 2001), which make comparing and categorizing value-expressive criteria a difficult task.

After reviewing a large body of social-psychological studies on procedural justice and its determinants, Tyler (2000a) concluded that four elements are central in the assessment of procedural fairness: voice, respect, neutrality and trust. (1) *Voice*, a term used by Folger (1977) to redefine Thibaut and Walker's process control, stands for the opportunities to participate in the resolution of the conflict and the presentation of one's concerns. In line with the normative justice motive, the opportunity to voice arguments and issues suggests that one's views are considered worthy to be heard (Lind, Kanfer & Earley, 1990). Voice is the most consistent and stable finding in procedural justice research (Van den Bos, 1996). (2) *Neutrality* represents the perception of honesty, impartiality and objectivity displayed by the judicial authorities. (3) *Trust* relates to the assessment of the authorities' motives and the use of their discretionary competences. All this is related to the perception of whether these authorities consider the parties' concerns in the decision-making. '*People only value the opportunity to speak to authorities if they believe that the authority is sincerely considering their arguments (...) even if they were then rejected* (Tyler, 2000a, p.122).' (4) Finally, people want to be treated with *respect* and dignity. According to Tyler '*more than*

any other issue, treatment with dignity and respect is something that authorities can give to everyone with whom they deal (Tyler, 2000a, p.122)'.

1.2.5. Specific attention to the interpersonal dimension of treatment as fairness

With the introduction of the normative justice motive, attention broadened from fairness of the decision-making alone (*i.e.* trust and neutrality) to include fairness of the treatment of disputants (*i.e.* voice heard and respect) (Hegtvedt, 2006; Rottman, 2007). This shift is most prominently illustrated with the development of interactional justice, a model that developed from procedural justice research in work and managerial settings. Central to this concept is the relevance of interpersonal elements in justice dealings and their assessment by the parties involved. Apart from procedural considerations, people also have expectations regarding the procedure's enactment and the decision-maker's behaviour in executing the procedure (Bies & Shapiro, 1987; Blader & Tyler, 2003). Such interactional considerations include the justification of the decision, truthfulness, respect from decision-maker and propriety (*i.e.* refraining from improper remarks) (Bies & Moag, 1986 as referred to by Colquitt, 2001). Also, when a decision is accompanied by a causal account, *i.e.* the explanation of the procedure and the decision, even if unfavourable, it will more likely be accepted (Bies & Shapiro, 1987). Sheppard and Lewicki (1987) name reasonableness and interpersonal communication as significant factors for disputant satisfaction. When decision-makers treat people with respect and sensitivity, and explain their decisions, people are more likely to be satisfied (Colquitt, 2001). One criminal justice related illustration of the relevance of the interactional justice model, is Sherman's Emotionally Intelligent Justice paradigm, presenting restorative justice as an emotionally intelligent model (Sherman, 2003). Although the law is obviously a rational tool, it should not impede the judicial authorities to approach the clients of the criminal justice system as

emotional actors. Sherman encourages justice officials to '*adopt a* rational *stance towards a presumably* emotional *offender, as well as towards the emotions of victims and communities in order to persuade citizens to comply with the law* (Sherman, 2003, p.8)'.

1.2.6. The relation between distributive, procedural and interactional justice

Since procedural justice was first introduced by Thibaut and Walker in 1975, it has been extensively tested and researched, leading to the discovery of the normative justice motive, the development of procedural determinants and the description of interactional justice. Apart from knowing that the distributive, procedural and interactional justice dimensions are not mutually exclusive, it is not entirely clear how exactly they relate to each other.

1.2.6.1. Two or more distinct components of fairness?

First of all, the number of distinct, independent dimensions within a fairness assessment has not been determined (Folger, 1996; Wemmers, 2010). Blader and Tyler (2003) opt for a two-dimensional justice model, on the one hand consisting of procedural justice, based on the quality of interpersonal treatment and the quality of the decision-making, each of which are assessed using information coming from formal (judicial rules and codes) or informal sources (judicial authorities), and on the other hand consisting of distributive justice. They treat interactional justice as an interpersonal or social dimension of procedural justice rather than as a separate dimension. Bies (2001) and Colquitt (2001), however, argue that interactional justice should be treated as a separate, independent justice component. Bies (2001) indicates that empirical findings strongly suggest that people distinguish between procedural and interactional determinants. He warns of mudding the procedural justice

concept and transforming it into an umbrella concept if interactional justice is not recognized as a distinct fairness dimension (note the similar warnings for the umbrella effect in the development of the restorative justice model, see 1.1.1.3.). Based on their empirical study in the work environment, Cropanzano, Prehar and Chen (2002) also found strong support for the separation of interactional justice from procedural justice.

Adding to the distributive, procedural, and interactional justice models, Colquitt (2001) suggests a fourth distinct model, *i.e.* informational justice. It strongly resembles the causal account idea described earlier (Bies & Shapiro, 1987), as it is operationalized as candid communication between the decision-maker and the disputant, thorough explanation of the procedure, timely information and information that responds to the disputant's needs (Colquitt, 2001). By collapsing these four distinct justice dimensions, Colquitt argues that important variance in the assessment of justice will be lost. According to Colquitt, each of these four models should be respected to ensure an independent impact on fairness assessment. After closely examining the correlations presented by Colquitt on the four distinct dimensions of justice, Wemmers (2010) notes that the correlation between procedural and informational justice in Colquitt's study is very high and, hence, finds the conclusion that informational justice should be seen as a separate concept questionable. Therefore, due to the ambiguous nature of the independency of informational justice, we choose not to incorporate it as a distinct fairness dimension for the purpose of this dissertation, while further empirical research in this matter is certainly advisable.

1.2.6.2. A hierarchy or a heuristic?

To understand the relation between the different observed justice dimensions, it is not only a question of establishing which dimensions stand on their own, but also to determine whether one, in its relevance, dominates the others (not implying that either dimension renounces the relevance of the other dimensions). For instance, people separate the

assessment of the outcome from the assessment of the procedure to what extent (Tyler, 1996)?

Thibaut and Walker's findings indicated that procedural factors explained more variance in justice judgements than outcome variables (Vermunt & Törnblom, 1996). Similarly Tyler (1988) observed that in informal and formal encounters of citizens with police and court, both distributive and procedural justice are relevant, but that procedural justice is uniformly more important than distributive justice. In other words, if this is true, fair outcome *has* to be delivered through a fair procedure for an overall evaluation to be positive. However, in order to consider and appraise both outcome and procedural fairness, one needs information on both. Tyler's observations about the dominance of procedural justice over distributive justice presuppose that disputants have all the information they need to estimate the fairness of the outcome and the procedure alike. In reality, people deal more likely with uncertainty and limited information (Lind & Van den Bos, 2002).

In this perspective, procedural justice scholars such as Lind and Van den Bos have been able to integrate, rather than oppose, the seemingly competing distributive and procedural justice model (Van den Bos, Vermunt & Wilke, 1997). People are generally uncertain about procedures and their relationship with the decision-making authority. As disputants disclose a conflict to an authority, they concede part of the control over the conflict, while they do not necessarily know whether the authority can be trusted. Therefore, they start looking for information to evaluate whether the authority can be trusted, whether the decision-maker is unbiased, *etc*. They collect whatever information is available, be it distributive or procedural information. These first impressions will serve as a framework or a '*fairness heuristic*' to interpret subsequent information (Van den Bos, Vermunt & Wilke, 1997). Since people instantaneously create such cognitive shortcuts to assess fairness (Lind & Van den Bos, 2002), what is fair depends on what comes first (Van den Bos, Vermunt & Wilke,

1997). As a result, procedural and distributive information can be interchangeable and interactive.

When initially procedural information is available and the procedure is favourable, people rely on this information and assessment of the procedure to also evaluate the outcome fairness. This is called the '*fair process effect*', *i.e.* the beneficial effect of a fair procedure on the evaluation of the outcome, of which information is not readily available (Van den Bos *et al.*, 1998; Van den Bos *et al.*, 1999). Similarly, when distributive information is more readily available, and the outcome is perceived as fair, disputants use this information to evaluate the fairness of the procedure, labelled the '*fair outcome effect*' (Vermunt & Törnblom, 1996; Van den Bos, 1999). Between the two, the fair process effect appears to be the most robust research finding and it might have instigated procedural scholars to assume that procedural justice dominates (but not excludes) distributive justice. However, the nature of the truth may be more practical. It is more likely that people more easily evaluate the fairness of the procedure than of the outcome, due to lack of comparison of a just outcome. Typically people do not know the outcomes for others in a comparable situation; hence, they will turn to the only information available, namely information about the procedure, to assess overall fairness (Van den Bos *et al.*, 1997).

An expansion of this concept is the '*primacy effect*' (Lind, Kray & Thompson, 2001): fairness judgements are formed early in encounters with previously unknown decision-makers, creating a framework for future fairness judgements regarding this authority. This would imply that early fairness experiences have a greater impact on overall fairness judgements than subsequent experiences. Several experimental studies, however, demonstrate a '*recency effect*', *i.e.* the latest experiences have the strongest impact on overall fairness judgements (Lind & Van den Bos, 2002). To further investigate these conflicting observations, Lind and Van den Bos (2002) reconsidered relevant studies in organizational psychology and found that, independent of the primacy or recency of

experiences, fairness effects are strongest under conditions of high uncertainty, implying that uncertainty regarding the situation, and not the timing of the experiences, is the discriminatory factor. The higher the uncertainty, the more important are the fairness judgements to manage this uncertainty (Lind & Van den Bos, 2002).

Tyler found that '*prior knowledge about the outcome (being before the veil)*[4] *does not change the way people define the meaning of the fairness of a procedure. However, people place less weight on their judgments about procedural fairness when evaluating the decision maker if they make those judgments already knowing the outcome of the procedure* (Tyler, 1996, p.311)'. Tyler defines this finding less in terms of a heuristic and more as an issue of weight, but he agrees that his findings support the fairness heuristic assumption (Tyler, 1996).

1.2.7. Fairness for victims of crime

Procedural justice and the fairness heuristic model apply to a very large range of social conflicts, of which criminal offences are only a small portion. Procedural justice has mostly been investigated in relation to organizational psychology, concerning for instance human resources management. They have also been applied, to a minor extent, to criminal justice issues, such as the verification and establishment of the procedural justice model as a compliance theory, countering the dominant deterrence theories regarding desistance from crime (see 1.2.2.). Only a limited number of studies on procedural justice in criminal offence cases focus on the experiences of crime victims.

First of all, the quality of the interactions with decision-makers and the quality of the decision-making does indeed matter to victims of crime (Wemmers, 2010). Wemmers and

[4] This could also be referred to as the fair outcome effect.

Cyr (2006a) observed that for victims of crime, interpersonal contact with authorities is particularly important with respect to procedural justice assessments (as opposed to informational justice; see also 1.2.6.1.). Malsch and Carrière (1999) found that victims consider not only distributive but also procedural fairness for compensation of material and immaterial losses (which is an outcome-oriented need). Orth (2002) identified both distributive and procedural satisfaction to be powerful predictors for the absence of secondary victimization after participating in criminal justice proceedings. He specifically notes that outcome satisfaction is, however, not related to punishment severity. As such, he seeks to avoid victimological research to be instrumentalized to justify repressive and tough punitive measures.

Different forms of victim participation can be distinguished. Edwards (2004) ranks them on a '*ladder of participation*'. He distinguishes between giving victims the right to decision-control, consultation of their preferences for the judicial decision, providing information to the decision-makers and simply allowing victims to express themselves. Wemmers (1996) found that victims primarily want to be heard and their issues considered. This falls between two of Edwards' levels, *i.e.* between expressing themselves and having decision-control. The predominance of voice (or process control), as well as the pertinence of the relational model with regard to the victim's point of view is confirmed by Wemmers (1996): '*Victims do not seek a decision making role but voice and process control* (Wemmers, 1996, p. 72)'. Her research results highlight the distinction between the importance of process control versus the importance of decision control. Victims want input in the process leading up to a decision, but do not want to bear the burden of the actual decision-making power. They are glad to delegate the outcome control to a judicial authority (Wemmers & Cyr, 2004). Their wish to be consulted is not synonymous with outcome control. These two forms of control tend to be collapsed together and hence confused as one form. The involvement of victims in the procedure should not imply that they also have to deal with decision-making power, which should remain in the hands of

the judicial actors. Nonetheless, judicial actors are still expected to take victims' concerns into account (Fenwick, 1997). Because, '*voice is not just about expressing one's needs but also, and perhaps more importantly, about being heard* (Wemmers & Cyr, 2006b, p.122)'. In this perspective, voice surpasses the expressive level by allowing victims to literally express their grievances and concerns. However, it does not stretch to burdening victims with decision control. The observed need for process control or voice is fully compliant to the relational model of procedural justice and therefore, it is normative rather than instrumental to the actual outcome or decision (Wemmers, Van Der Leeden & Steensma, 1995).

In their study involving Quebec victims of property and violent crimes, Wemmers & Cyr (2006a) measured procedural fairness at two moments, once when the judicial file was referred by the police to the prosecutor, and once again six months later. They note that procedural fairness reduced with the progression of the judicial procedures. Six months into the judicial procedures, procedural fairness was significantly lower. This might be explained by the lack of interaction between victims and prosecutorial services, in contrast to generally more personal contacts between police officers and victims (Wemmers, 1996). Perhaps as well the contact with the police is more crucial because it comes first (Wemmers, 2010). The exact cause of this observed decrease in procedural fairness as the judicial process advances needs to be studied further.

Herman (2003), one of the leading scholars in victim trauma, suggests that there is a connection between voice, described as the opportunity for involvement and participation, and healing. Findings regarding the consequences of crime and trauma healing in particular reveal victims' loss of control and the need to regain control over their life (Herman, 1997). One way to do so is to engage the criminal justice system. The fact that a victim reported the crime to the police is in itself a manner to take back the control that the offender took away. It is a way of saying that a third party should get involved in looking for a solution

for the crime. This does not, however, imply that the victim wants to delegate all control to the criminal justice system and its officials. Regaining control, even though a third party has been called upon, also implies the need to be involved to some extent in the procedures undertaken in the criminal justice system.

> '(R)ecent studies suggest that respectful and inclusive policies may affect victims' mental health as well as their feelings of satisfaction. (Also), victims' overall satisfaction with the criminal justice system was directly related to their sense of inclusion and empowerment. (…) Victims' subjective ratings of satisfaction with the justice system were also closely correlated with the objective measure of psychological health. (…) The results of these studies suggest that victim inclusion, choice, and empowerment may be the best predictors of mental health outcomes (Herman, 2003, p.163).'

Similarly, Wemmers and Cyr (2005) found that there is a significant relationship between the victim's fairness judgment and the perception of well-being. They conclude that '(f)*air procedures appear to be therapeutic for crime victims* (Wemmers & Cyr, 2005, p.539)'.

One of the accomplishments of introducing the group-value model of procedural justice is the observed impact of subjective fairness on norm-conforming behaviour. Since procedural fairness perception increases the decision-maker's legitimacy and confirms one's relation with the community, people are more likely to comply with the law, because they want to maintain this relationship (Tyler, 2006a). Considering that desistance from crime as well as the reporting of crime is law-compliant behaviour, one might expect that when victims feel that they have been treated fairly, if new criminal events occur, they will report them. Ruback, Cares and Hoskins (2008) found that for victims of property and violent crime, distributive, procedural and interactional fairness perceptions positively impacted their willingness to report future crimes. However, Hickman and Simpson (2003) did not find procedural justice to positively impact future reporting behaviour by victims of domestic violence, but distributive justice did (the outcome, arrest or non-arrest of the

offender, was put down as fair when it corresponded with the respondents' preference). Earlier, Smith (2001) had also found mixed indications in her interviews with battered women with regard to their opinions on policies obliging victims of domestic violence to file complaints. She found that victims of domestic violence support any type of intervention, but that mandatory reporting laws are the least likely to increase reporting of spousal abuse versus having a choice to report (the last option fitting procedural justice observations). Both Hickman and Simpson (2003) and Smith (2001) are unable to explain these ambiguous findings. Evidently, domestic violence presents specific issues: there is a social bond, albeit a destructive and dysfunctional one, between the victim and the offender, which risks to be further destroyed by reporting the offender to the police (Tremblay, 1998). Consequently, when a victim is confronted with new events and considers whether or not to report them, earlier experiences with the police might be dominated by the preference to not further destruct the relationship. However, this is purely speculative and not supported by empirical data.

In conclusion, various independent observations reinforce the relative importance of voice and victims' involvement in judicial procedures, as it positively impacts the healing process. One justice model that emphasizes active participation and communication, thereby distinguishing itself from the traditional judicial proceedings, is the restorative justice model (Strang & Sherman, 2003). Does the search for involvement by victims include restorative justice? Empirical findings demonstrate that (1) victims who accept to participate in a restorative intervention are generally very satisfied with the offer, as opposed to their frustrations with the traditional criminal justice system, and that (2) procedures that allow victims to be involved and voice their concerns are considered fairer and satisfactory. Procedural justice might prove to be a relevant model to explain victim satisfaction with restorative practices. It could also offer an alternative for or a better understanding of the self-selection bias presented by Latimer, Dowden and Muise (2005), often interpreted as the presumption that victims who accept the offer of restorative justice,

have a certain predisposition to find the restorative procedure and outcome satisfactory (see 1.1.2.2.). The fact that victims were given voice or process control within the restorative intervention could be a determinant for satisfaction. If this is correct, the choice to participate should be recognized as an inherent factor to restorative justice being satisfactory, rather than insisting on the self-selection bias to temper outstanding results regarding the satisfaction with restorative justice. Process control would be a more insightful and stronger notion than the self-selection bias.

1.3. A matchmaker's delight: joining restorative justice and procedural justice

1.3.1. Parallels between restorative and procedural justice

The notion that there might be a parallel between restorative justice and procedural justice is not innovating in itself. Key elements of restorative justice such as the focus on communication and involvement are equivalent to process control or voice, central in the procedural justice model (Aertsen, 2001; Shapland *et al.*, 2006). Certain restorative justice scholars, much like procedural justice scholars, recognize the importance of the procedure leading to an outcome, describing the restorative procedure as an end in itself, while the criminal justice procedures are only a means to an end (Wright, 1996). According to Braithwaite (2006), justice *has* to be procedurally fair to be restorative. Cohen (2001) proposes that restorative justice can stimulate the further development of procedural justice as a theoretical model. It can be assumed that procedural justice can in turn offer insight into restorative justice.

In addition, restorative and procedural justice seem to find each other in the common goal of encouraging desistance and norm-conform behaviour without having to rely on punishment (Tyler, 2006b), a link acknowledged in Sherman's Emotionally Intelligent Justice model (Sherman, 2003). Both restorative and procedural justice models regard the moral development of the offender and self-regulation of future behaviour by offering restoration and fairness as important. Tyler and Sherman co-author an article on the parallels between procedural justice and restorative justice and their impact on recidivism, evaluating the restorative justice inspired RISE-project, founded on the reintegrative shaming theory, with regard to desistance from drunk-driving (Tyler *et al.*, 2007).
A small number of studies have focussed on the perceptions of victims of crime on restorative justice using procedural justice as a measurement template. As described earlier, scholars noticed that restorative justice seemed not only to contribute to victims' satisfaction because of its outcome, but also because of some of its procedural aspects (see 1.1.2.3.).

Wemmers and Cyr (2004, 2006b), having measured the appreciation of victims of VOM by explicitly using procedural justice determinants, found that victims specifically appreciated process control or voice in VOM, as an opportunity to present their concerns and to be heard, without being burdened with decision control. '*(V)ictims find mediation fair because it offers them recognition and respect through consultation, not because it allows them to make demands* (Wemmers & Cyr, 2006b)'.

Daly (2004) incorporated procedural justice variables in her evaluative research of restorative justice conferences for juvenile offenders in Australia involving a comparative (restorative intervention versus court proceedings) and a non-comparative study. She found that with regard to the restorative approach, both offenders and victims scored high on all the procedural justice indicators (namely being treated fairly and with respect, having a say, participating in the process), while they did not indicate similarly high levels of

'*restorativeness*' (measured as the degree to which the offender was remorseful, apologized to the victim, understood the impact of victimization, the degree to which victims understood the offender's situation, and the extent of positive movement between the offender, victim, or their supporters). Daly did not specify the overall appreciation of the restorative procedures in her samples. As such, it is impossible to verify whether there was a cushion of support effect.

Based on their comparison of three distinct justice models, *i.e.* restorative justice, retributive and welfare justice model, Dignan and Cavadino (1998) conclude that only restorative justice succeeds in combining both procedural and support rights to victims. However, they restrict procedural rights to decision control and do not consider process control as a distinctive feature. Indeed, in terms of procedural justice, restorative justice processes offer victims both process control and decision-making power, and are therefore bilateral (a neutral third party is present but does not intervene in the dialogue and outcome-decision). Thibaut and Walker (1978) indicated that people generally prefer bilateral conflict resolution procedures, unless the opposing disputant's interests are non-correspondent. Even in high conflict situations, such as crime, victims and offenders can still have mutual interests, which can be dealt with bilaterally. Yet, victims of crime are generally not looking for decision-making power, even when they accept to participate in a restorative intervention (Wemmers & Cyr, 2004). Hence, how does the bilateral nature of restorative justice hold up to the victims' need for process control and not for decision control?

1.3.2. Onwards and upwards - Studying the relation between restorative and procedural justice

'*Researchers, along with practitioners, need to continue ferreting out what factors contribute to participant satisfaction* (Umbreit, Coates & Vos, 2002, p.15)'. Until recently, the theoretical explanation for victim satisfaction with restorative justice remained largely neglected (Strang *et al.*, 2006). To this effect, the Sherman and Strang research team have been using randomized control trials to test the validity of cognitive behavioural therapy and interaction ritual theory to explore the impact of restorative practices on the victim's mental health specifically (Sherman *et al.*, 2005; Strang *et al.*, 2006). In order to try and explain victim satisfaction with restorative justice as well as feelings of empowerment, the verification of the procedural justice model has also been initiated and the findings are promising, as described above. The procedural justice model might offer a fresh and enlightening approach to the question of victim satisfaction with restorative practices. This research project further contributes to this search.

We will analyze the experiences with restorative justice of victims of violent crime, a minority among the general population of victims of crime. Restorative justice has been applied and studied predominately with property or minor offences. There is still considerable doubt regarding the applicability of restorative interventions in cases of violence, such as sexual aggression, domestic violence and murder. Restorative practices dealing with these types of offences have, nonetheless, been implemented and appreciated by victims and offenders alike.

Starting with the question what makes restorative justice acceptable and satisfactory for victims of violent crime, we set out to verify whether a restorative procedure is simply appreciated because it is perceived as fair. In other words: is a restorative practice

satisfactory because it allows process control or voice? Does it respond to requirements of respect, neutrality and trust? Does it fit the group-value model of procedural justice?

In addition, we ask ourselves whether restorative justice transgresses the procedural justice template. Is the appreciation of the restorative approach only related to the possibility to be involved in the search for a response to the offence, a possibility that is very restricted or even non-existent in the traditional criminal justice system? Would victims get equal satisfaction if involvement and voice were sufficiently provided in the criminal justice system? Or does restorative justice contribute in a unique way to victims' needs, in a way that other potentially fair procedures do not? Is there something about restorative justice that cannot be replicated in other equally fair procedures? '(*I)s restorative justice merely a more successful and better implemented form of procedural justice – so essentially just a processual tool, but otherwise identical to the concerns of criminal justice? Or does it add further dimensions?* (Shapland *et al.*, 2006, p.512)'. If restorative justice is found to be merely complying with procedural justice determinants, additional ways of victim involvement in the criminal justice system should be explored. If so, from a victim's point of view, we would then need to concentrate efforts concerning victim support on the implementation of victim rights and victim participation in the criminal justice procedures as well as the training of police and justice officials with regard to the proper treatment of victims, because restorative procedures require a big commitment from the victim. However, if we can demonstrate that restorative justice does contribute in a unique and exclusive way to the victim satisfaction, the development of restorative justice programs is highly advisable as a complement to other victim support and victim rights policies and practices.

In practice, as we have seen in 1.1.1.2., restorative measures have been made available at different stages of the judicial proceedings (at police level, before and after prosecution, during the sentencing phase). Hence, some of these practices take place before

adjudication. Therefore, we also want to verify the impact of the absence or availability of a judicial decision on the assessment of restorative justice. The purpose and motivation of participation might differ in these two groups of victims. It is imaginable that victims participating in a restorative intervention before a judicial decision has been pronounced in the file feel more burdened with decision control, in contrast to victims that only participate after a judicial decision was taken in their file who might primarily perceive their participation as a form of process control. In other words, how does the timing of the application of a restorative intervention affect its evaluation?

On a more theoretical note, although our main goal is to explore the compliance and transcendence of restorative justice with regard to procedural justice and to contribute to the search for a theoretical explanation for victim satisfaction with restorative justice, our findings might also contribute to the development of a consensual definition of restorative justice and shed light on its compatibility with the traditional criminal justice system.

Empirical objectives

- Verify the compliance of RJ with PJ
- Describe the degree to which RJ potentially moves beyond PJ
- Examine the appreciation of RJ relative to its timing within the judicial proceedings

Theoretical objectives

- Explore the relevance of the PJ theory to explain the appreciation of RJ by victims of violence
- Contribute to the search for a consensual definition of RJ
- Contribute to the debate on the position of RJ in the criminal justice system

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2. A contextualization of the Canadian and Belgian restorative justice practices

As indicated in our third empirical research objective, we wish to learn how the availability or the (provisional) absence of a judicial decision, *e.g.* adjudication, impacts the evaluation of a restorative intervention by victims of violent crime. Therefore, we needed to be able to compare the experiences of victims of violent crime with a restorative intervention before or after a judicial actor has passed a verdict in their file. We choose to meet victims in Canada and in Belgium. In Canada, VOM is only admissible to victims of violent crime committed by an adult offender after sentencing. VOE's are possible in every stage. VOM is possible in a pre-adjudication stage in juvenile cases as well, but are less common when concerning violence (Martire, 2005). In Belgium, however, restorative practices, including VOM, are available before or after adjudication in any type of offence. Our goal is *not* to compare experiences with the restorative practices in these two countries, but to compare the experiences of victims with their participation in a restorative intervention before or after the criminal justice proceedings resulted in a judicial decision. Nevertheless, the inclusion of respondents coming from two different countries requires a description and contextualization of the national restorative practices, which is the objective of this chapter.

Apart from having developed victim support services and victim rights charters, both Belgium and Canada have made considerable efforts to develop restorative practices. But the similarities stop there. Under the Napoleonic rule, Belgium adopted the inquisitorial adjudicatory regime, while Canada, as part of the British Commonwealth represents the common law and its adversarial regime. Consequently, their respective legal cultural and legal structural elements present dissimilar frameworks for the development of restorative policies. Before getting into the details of the restorative policies and their application in Belgium and Canada (in paragraph 2.2.), we will outline the legal fundaments of both countries' judicial regimes.

2.1. The fundaments of two distinct legal traditions

2.1.1. Canada's adversarial regime

2.1.1.1. The common law tradition

In the United Kingdom, the United States and Canada, as well as in most post-colonial nations of the British Empire, the common law tradition and its adversarial regime dictate the criminal justice system. Even in the French-Canadian province of Québec, which has a bijural system, criminal law concurs with the common law tradition.[5] The main distinction of common law from civil law (also referred to as continental law) is the supposedly minimal codification of rules. In common law, infractions and their penalties are defined and restricted by statutory law, but judges are given room for interpretation. Hence, rules are (re-)designed through their application in court. In this perspective, the primary source for judgment in the common law tradition is not the statutory law, but casuistry, known as the rule of precedents. Decisions in previous cases can affect the law and its application in future cases, at least in the same jurisdiction. The common law tradition is, therefore, portrayed by Garcia-Villegas (2006) as centred on legal anti-formalism and legal pluralism. Since tensions in the law are addressed in its daily application, the law becomes a dynamic tool that can be refined and manipulated through casuistry. This law-in-action approach implies that judicial actors such as lawyers, prosecutors and judges can become social engineers (Kritzer, 2004).

[5] The Quebec bijural system implies that issues arising from the provincial jurisdiction are dealt with according to the civil or continental law tradition while issues linked to federal law, such as criminal law infractions, are dealt with according to the common law tradition.

In theory, the common law tradition seems highly receptive to change, due to its foundation in casuistry. Since judicial actors are given discretionary flexibility, the law-in-action model offers ample opportunity for the introduction and experimentation of new ways of dealing with crime, such as restorative practices. However, Landsman (2004) fears that the fundaments of the common law tradition could be strongly endangered by the introduction of restorative justice. The restorative approach, according to Landsman, represents the privatization of conflict resolution, which leads to the vanishing of trials and consequently of precedents and casuistry, therefore cutting away on the fundaments of the common law. '*Private processes like mediation and arbitration cannot provide an effective substitute for trials because secrecy is their hallmark* (Landsman, 2004, p.978).'

2.1.1.2. The adversarial regime's principles

In the adversarial regime, as applied in Canada and the USA, the public prosecutor is given large discretionary power in deciding which cases need and can go to trial. '*Through his power to determine the number and nature of criminal charges, the prosecutor is able to manage a heavy caseload with existing resources, to reconcile general criminal statutes with mitigating factors in particular cases and to establish priorities among offenders, offences, and law enforcement strategies* (Goldstein & Marcus, 1977, p.240). An essential instrument to this end is the mechanism of "plea-bargaining". In exchange for the defendant's cooperation and recognition of guilt, a case can be dismissed or its charge reduced. These exchanges of benefits, *i.e.* dismissal or charge reduction for the defendant and caseload reduction for the prosecutor and the court, take place without the involvement of the victim. While the prosecutor in the inquisitorial regimes also has substantial discretionary power with regard to the decision to prosecute, the construct of plea-bargain is unavailable to him and his discretionary power is slightly more restricted than his adversarial counterpart's (see 2.1.2.2.).

The adversarial adjudicatory regime is further characterized by decentralized evidence-production, a party-controlled trial, an observing judge and the absence of the victim in the judicial proceedings as a formal party. The defendant and the public prosecutor are both responsible for the production of respectively exculpating and inculpating evidence. This implies that the parties have control over what information to disclose to the judge (Che & Severinov, 2006). It has been found that the non-disclosure of information to one's opponent has an impact on the accuracy of the judicial outcome, either favouring or disfavouring the defendant (Block *et al.*, 2000). The judge observes while the defendant and the public prosecutor present their evidence in court and respectively challenge the validity of their opponent's arguments.

The evidence is assessed through the use of cross-examination, to which both the offender and the victim can be subjected, if summoned as witnesses. Cross-examination serves the principle of primacy of live oral evidence. It is a test of a witness' veracity and conduct. Witnesses are literally put to the stand and will be subjected to testing questions from the defence lawyer and the prosecutor, including questions that could provoke hesitation and elicit responses with the purpose of invoking incriminating or exculpating evidence (Ellison, 1999). Being on the witness stand and challenged by the defendant's lawyer, and having one's word weighed and questioned in court is quite confrontational for many victims. Cross-examination can, hence, be a source of fear, anxiety and embarrassment and thus of secondary victimization (Resick, 1987; Ellison, 1999; Wemmers, Cousineau & Martire, 2003). Herman (2003) straightforwardly describes the adversarial procedures as hostile:

> '*Physical violence and intimidation are not allowed in court, whereas aggressive argument, selective presentation of the facts, and psychological attack are permitted, with the presumption that this ritualized, hostile encounter offers the best method at arriving at the truth. (…) Involvement in legal proceedings constitutes a significant emotional stress for even the most robust citizen* (Herman, 2003, p.159)'.

According to Fernandez-Molina and Rechea-Alberola (2005) '*(i)t makes sense that (restorative justice) practices started in Anglo-Saxon countries, where their adversarial justice system, which preaches a more negotiated justice, makes these practices that foster the meeting of the parties, easier* (Fernandez-Molina & Rechea-Alberola, 2005, p.62-63)'. However, the adversarial regime does not include the victim as a formal party, neither in the pre-trial negotiations nor in the trial proceedings, while restorative justice does. Using the negotiating potential of the adversarial regime to promote restorative justice would, thus, require a more prominent role for victims. Moreover, according to Shapland (2000) '*(i)n practice the offender is often as much a non-player as the victim, since active negotiations over these decisions (*i.e. *dismissal or charge reduction following guilty plea) tend to take place with his or her legal representative, rather than with the offender personally* (Shapland, 2000, p.157)'.

On the other hand, the public prosecutor's discretionary liberty could be grabbed as an opportunity to introduce restorative justice. Instead of unconditionally dismissing a case following the defendant's acknowledgement of responsibility, the defendant could be informed about the possibility of a restorative intervention. While the current configuration of the adversarial mechanism of "plea-bargaining" overlooks the victims' need for involvement and compensation (Wemmers, Cousineau & Martire, 2003), it could be redesigned as a portal to restorative justice (Heinz & Kerstetter, 1981).

Doak (2005) fears that any type of victim-oriented change could destabilize the adversarial regime. The adversarial regime is strongly '*geared towards the protection of the public's interest in denouncing and punishing unacceptable behaviour, and not the private interest of individual parties* (Doak, 2005, p.299)'. Doak, therefore, concludes that the public prosecutor and the victim are '*strange bedfellows*'. This could explain why victim policies in Canada are concentrated on service rights, providing for victim support services and victim compensation funds (the concrete design and execution is left to the provinces and

territories, which leads to substantial differences across the country), but very little on procedural rights. Following the 1985 UN Declaration of Basic Principles for Victims of Crime and Abuse of Power, the Canadian government endorsed the Canadian Statement of Basic Principles of Justice for Victims of Crime in 1988, introducing basic rights for a respectful treatment, information and compensation. Bill C-89 in 1988 introduced the Victim Impact Statement, allowing victims to present a written declaration at the sentencing stage or at the parole board describing the consequences of the victimization. In 1992, the CSC followed through with the recognition of the victim's need for receiving information on the offender and his sentence through the enactment of the Corrections and Conditional Release Act (Correctional Service of Canada, 2008a). This evolution continued with the creation of the national Victim Services at the CSC in 2001. These reforms, while crucial, still do not imply that victims receive a formal status as a party in the criminal lawsuit.

2.1.2. Belgium's inquisitorial regime

2.1.2.1. The civil law tradition

The civil law (or continental law) tradition refers to the legal tradition inspired by the Roman law and imposed on the European continent by Napoleon. In many respects, it directly opposes the common law tradition. Following the principles of the Enlightenment of uniformity, equality and certainty of law (see for instance Beccaria's '*nullum crimen, nulla poena sine lege*'), the importance of codification of rules is stressed within this model. The primary source for litigation is the written rule. Also, legal doctrine, not casuistry, primarily creates the guidelines for the interpretation of regulation within the framework of the written law. It offers an academic solution for tensions and contradictions in the law (Garcia-Villegas, 2006). The written regulation is absolutely binding and,

theoretically, the discretion of judicial actors is limited. Consequently, the civil law tradition is qualified by Garcia-Villegas (2006) as legal positivist or as a law-in-books approach.

The civil law tradition seems less likely to allow change than the common law tradition, as changes to the written rules require parliamentary debate and consensus. Then again, change in the civil law tradition promises to be more stable, due to the fact that change is formalized and binding. Nevertheless, while the continental law tradition appears to be rigid and slow to change, we see that even in this system change is abundant, almost paralyzing. In Belgium, for instance, one might speak of an inflation of regulation (also referred to as '*legal pollution*' or '*legal elephantiasis*'; Parmentier & Van Houtte, 2003, p.21), leading to the ambiguity and fragmentation of penal policy (Snacken, 2001).

Table 1. Characteristics of the common law and civil law tradition

Characteristics legal tradition	**Common law (*e.g.* Canada)**	**Civil law (*e.g.* Belgium)**
Source	Rule of precedent and casuistry	Written rule and legal doctrine
Dynamics	Law-in-action	Law-in-books
Nature of reform	Dynamic for change (bottom-up approach)	Stability of change (top-down approach)

2.1.2.2. The inquisitorial regime's characteristics

The inquisitorial regime is theoretically based on the *ex-officio* principle, stating that a prosecutor has to start public action against any infraction registered by the police. However, the *ex-officio* principle is not absolute. The Belgian law, for instance, stipulates

that certain offences can only be prosecuted after the victim filed a complaint, *e.g.* in case of stalking (Brienen & Hoegen, 2000). Also, prosecutors are allowed discretionary wiggle room in order to assure the workability of the criminal justice system when they are dealing with a heavy caseload. This discretionary power is not provided by the law, as it is in the adversarial regime, and is restricted by the expediency principle. In Belgium, as in other inquisitorial regimes[6], '*it has become impossible to prosecute all crimes that come to the attention of the criminal justice authorities, and therefore, the public prosecutor has been given the right to dismiss the case (sic) conditionally or unconditionally* (Brienen & Hoegen, 2000, p.110)'. For conditional dismissals of cases, prosecutors can make use of several diversionary measures at their disposal, including penal mediation (not to be confused with victim-offender mediation, see 2.2.2.1.) or community service. There is no plea-bargaining between the prosecutor and the offender in the inquisitorial regime, which is a standard practice in the adversarial regime (Goldstein & Marcus, 1977). However, the mechanism of the conditional dismissal following the execution of diversionary measures does, in its result, not differ much from the idea of "plea-bargaining", namely both functioning as a tool to divert cases away from the judicial system to reduce its caseload (Freiberg, 2010). Hence, in the inquisitorial regime, '(*e)ven when discretion is not exercised openly, it may operate covertly and produce functional analogues of the (adversarial mechanisms of) guilty plea and the "plea bargaining"* (Goldstein & Marcus, 1977, p.264)'.

Furthermore, the control and responsibility for the production of both exculpating and incriminating evidence is centralized, and belongs only to the public prosecutor. He can, in serious or complex cases, appoint an examining magistrate (*juge d'instruction*), also called investigating magistrate, to conduct the necessary investigative activities to uncover the

[6] To keep the criminal justice system workable (Goldstein & Marcus, 1977), discretionary measures were adopted in the inquisitorial regime restricted by the legality principle in Germany (Blankenburg, 1998), the opportunity principle in The Netherlands (Rosett, 1972) or, as said, the expediency principle in Belgium (Brienen & Hoegen, 2000).

truth and assess the legal validity of the evidence, both inculpating and exculpating. The pre-trial investigation is secret, but the information is fully disclosed to the parties involved (defendant, public prosecutor and civil party) as soon as the investigation is terminated. All the evidence collected has to be recorded and needs to be assessable.

When a case is eventually brought before the court, the legitimacy of the evidence in the investigation report is evaluated by the judge (Goldstein & Marcus, 1977). The defence counters the evidence presented by the prosecutor by verifying the legitimacy and relevance of the evidence. The victim can be called to the witness stand to respond to questions from the judge, based on the written statements made by the victim added to the judicial file. The judge, who plays the role of an active inquirer, conducts a profound search for the truth, regardless of whether the defendant admitted his guilt during the pre-trial investigation. But again,

> 'genuinely probing trials take place only in those few cases in which the defendant actively contests the charges against him. (…) The remarkable brevity of uncontested trials (and the expediency principle) suggests (…) that European judges and prosecutors are no more anxious than Americans to prolong their proceedings and needlessly consume valuable time and resources (Goldstein & Marcus, 1977, p.265 and p. 270).'

A final important difference with the adversarial regime is the fact that in the inquisitorial regime, the victim is not necessarily the mere reporter of the offence or a witness. In Belgium, the victim is given the possibility to take a formal position in the form of (1) private prosecutor, (2) injured party (*personne lessée*) and (3) civil party (*partie civile*). (1) In some cases, the victim can directly summon the offender before the court or file a civil complaint directly before the examining magistrate, allowing the possibility to bypass the public prosecutor. But the strict legal conditions attached to these options of private prosecution rather discourage their use (Brienen & Hoegen, 2000). (2) The registration as an injured party (installed following the Law of March 12, 1998 '*relative à l'amélioration*

de la procédure pénale au stade de l'information et de l'instruction', known as the Law Franchimont) offers the victim the opportunity to claim certain procedural rights, *e.g.* to be informed about the developments in the criminal investigation and trial and request that certain investigative activities are effectuated or not undertaken. The prosecutor or examining magistrate needs to motivate his decision not to grant the victim's request. (3) Finally, the concept of civil party implies that a civil claim by the victim is attached to the criminal claim against the accused filed by the prosecutor, both addressed in the same criminal trial. A civil party bears the burden of proof for the civil claim, while the burden of proof for the criminal offence lies with the prosecutor. Therefore, it is advantageous for the civil party that the civil claim is addressed during the criminal proceedings, and that the civil party can resort to the evidence collected and presented by the public prosecutor. Since the Law Franchimont of 1998, the civil party also has the right to request access to the legal file during the pre-trial investigation as well as request additional investigative activities. However, the concept of the civil party is no *deus-ex-machina* for victim participation either. The role of the civil party is restricted to the civil claim and does not allow the victim to communicate with the offender and express their personal concerns to the offender, nor do they offer an informal way to vent their emotions. It does offer the victim the chance to occupy a formal position within the criminal proceedings, but this is not without consequences. There is an important financial burden attached to it, although in some cases free legal assistance can be accorded. Also, the enforcement of the eventual awarded civil compensation lies with the civil party. Finally, '*(t)he victim who acts as a civil claimant can no longer be heard as a witness because he is a full party to the proceedings, and (may) financially benefit from a conviction* (Brienen & Hoegen, 2000, p.134)'. In practice, a victim registered as a civil party can be called to witness but will then in principle not be allowed to attend the trial. The civil party's lawyer will of course be allowed to follow the trial.

Table 2. Characteristics of the adversarial and inquisitorial adjudicatory regime

Characteristics adjudicatory regime	**Adversarial (*e.g.* Canada)**	**Inquisitorial (*e.g.* Belgium)**
Prosecutorial discretion	Legal discretionary authority	Pragmatic discretionary power
Discretionary instruments	Plea-bargaining	Unconditional dismissal Conditional dismissal using diversionary measures
Responsibility evidence-production	Decentralized evidence-production (burden prosecutor and defence)	Centralized evidence-production (by prosecutor and examining magistrate)
Role judge	Passive judge	Inquiring judge
Position victim	Absence of victim unless when subpoenaed as witness	Formal status victim as civil party or injured party
Formality of procedures	Opportunity for negotiation between prosecutor and defence	High formality of procedures

While the 1998 Law Franchimont assures certain procedural rights for victims of crime (Hutsebaut, 1999), there have also been important reforms in creating victim support services on the level of the police, prosecutorial services and psychosocial services. Victim support services at the level of the police serve to inform victims about the services and procedures available, refer victims to other services if needed and provide the first emotional support at the scene of the crime if needed or shortly after the events until psychosocial victim support services can take over. Victim support services at the prosecutorial level offer assistance during the pre-trial investigatory proceedings victims, assistance and accompaniment during the trial and information about other services available. The psychosocial victim support services offer long-term support (Lemonne, Van Camp & Vanfraechem, 2007). As these different initiatives fall under different authorities

(federal ministry of internal affairs, federal ministry of justice and the Flemish and French communities' ministries of welfare)[7], various cooperation instruments (National Forum for Victim Policy, regional cooperation agreements between the different victim services) have been introduced and proof to be indispensable (Lemonne & Van Camp, 2005).

2.2. Restorative justice policies and their application in Canada and in Belgium

In a 2007 short article, Braithwaite points out that restorative justice has '*not proved politically unpopular* (Braithwaite, 2007, p.689)'. Member states of the European Union are encouraged to apply and promote victim-offender mediation through Recommendation R(99)19 of the Committee of Ministers to Member States concerning Mediation in Penal Matters and the European Council Framework Decision of the 15th of March 2001 on the standing of victims in criminal proceedings (article 10 in particular promotes the use of penal mediation in the course of criminal proceedings). The 2001 Framework Decision obliged the European members to promote penal mediation through national laws,

[7] Besides the Federal State, there are three cultural Communities (the Flemish Community, the French Community and the German Community) and three economic Regions (the Flanders Region, the Walloon Region and the Brussels-Capital Region). Rules enacted by the Federal State (in matters such as Justice, Social security, Internal Affairs) apply to the entire territory, whereas rules enacted by the Communities (in matters such as Education, Welfare, Culture) apply to Belgians according to their language. Rules enacted by the Regions (in matters such as Economy, Tourism, Environment) apply to all Belgians according to territorial criteria (Lemonne & Van Camp, 2005). On the complexity of the different authorities see Brienen and Hoegen (2000): '*First, Belgium is not a country, it is an accident of history. Mostly I tell strangers, that the best way to understand Belgium is to imagine a Belgian road junction. Four drivers coming from four directions, none of them giving way. One of the cars contains the Flemish, the second the Walloons, the third the Brussels Community and the fourth the German speakers from the Ost-Kantone. They all meet in the middle, but they do not crash. They simply block one another's way, including their own. In each car sit a catholic, a liberal, a unionist and a nationalist. They all start to discuss which way they should take to avoid traffic problems in the future. And, very exceptional in the world, nobody is starting a war. (...) The true Belgium is a politically elusive and geographically complicated entity. (...) The good side of it is that Belgians proceed pragmatically and always look for consensus, the bad side is that they usually just muddle along for lack of cohesion* (Van Kerckhoven, 1996, cited in Brienen & Hoegen, 2000)'.

regulations or administrative provisions by March 2006 (article 17) (for an overview of local legislation in Europe, see Miers & Willemsens (eds.), 2004; Miers & Aertsen (eds.), 2010, forthcoming). Aertsen and Peters (2003) note that in addition to the supranational policies on restorative justice, the grassroots initiatives and the cooperation between European restorative justice scholars (*e.g.* in the European Forum for Victim-Offender Mediation and Restorative Justice) stimulated the development of restorative practices on the European continent. The UN members states are encouraged to develop restorative justice practices through Resolution 1999/26 on the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, subsequently modified in 2000 (Resolution 2000/14) and in 2002 (Resolution 2002/12). Although only the European Council Framework Decision of 2001 is binding and the other supranational regulatory documents merely have the status of soft law, the recognition they all reflect regarding the potentiality of restorative justice as well as the recognition of the importance of voluntariness, confidentiality and impartiality as principles of restorative justice, is fundamental (Aertsen *et al.*, 2004).

On a national level, Canada and Belgium differ substantially when it comes to the institutionalization of restorative justice, which will be described in the following paragraphs. We will look closely at how the application of restorative practices in Canada and in Belgium responds to the concerns of victims of violent crime.

Research findings regarding the needs of crime victims reveal that victims of any type of crime generally express the need for information, for being treated with respect, for protection, for support, for reparation and for involvement in the criminal justice system (Shapland, Willmore & Duff, 1985; Maguire, 1991; Fattah, 1991; Christiaensen & Goethals, 1993; Wemmers, 2003). It is not unreasonable that victims want to know where they stand in the criminal justice proceedings (Shapland & Hall, 2007). Often the legal procedures will be unknown to the victim, and they are not aware of their rights and roles to

play. They also want to be informed about the progress in their case (Lemonne, Van Camp & Vanfraechem, 2007). Victims also express the need for being treated respectfully. They do not just want to be a reporter of crime or a witness in the judicial file. They have practical questions and particular concerns. Some victims, for instance, will worry about retaliation by the offender or feel insecure following the events. Certain measures or practical support might be required to help the victim feel safer. In some cases there will be a need for reparation, be it financial, material, emotional or symbolic (Wemmers, 2003). In general, victims are not known to be vindictive or retributive (Strang & Sherman, 2003), but they do ask for some sort of restoration of the damage done.

As we concentrate on victims of violent crime in this research project, emotional recovery seems particularly important. It is '*extremely difficult to predict which individual victim will suffer which effects to what extent* (Shapland & Hall, 2005, p.5)' (see also Lurigio, 1987; Resick, 1987; Kilpatrick *et al.*, 1987). Nonetheless, victims of violence are most likely to suffer emotionally following victimization (Shapland & Hall, 2007). In some cases, such emotions destabilize victims and deprive them of control over their life. In the worst case, the experience may even be traumatic. In a minority of cases victims develop a Post Traumatic Stress Disorder (PTSD) (Guay *et al.*, 2002). A trauma has a disempowering and disconnecting effect on the victim. Trauma tends to destabilize victims and inhibits them from acting as they normally would (Herman, 1997). Guay, Billette and Marchand (2002) indicate that inadequate social support for victims significantly affects the likeliness of the development of PTSD. The reaction of significant others is important. It can either relieve the victims of stress, or augment their level of stress. Symonds (1980) adds that victims may have expectations towards relatives, friends and professional support workers to reduce their feelings of powerlessness and helplessness. However, these expectations are not always expressed. When these silent expectations are not met, the victim will be further distressed, causing what Symonds called the "second injury". '*Essentially, the second injury is the victim's* perceived *rejection by – and lack of expected support from – the*

community, agencies, and society in general, as well as family or friends (Symonds, 1980, p.37).

It has been suggested that the adversarial and inquisitorial regime alike would benefit from borrowing each other's victim-oriented and more inclusive elements to comply with victim needs. Some argue that such hybridization is not the solution, but that only the introduction of post-adversarial and post-inquisitorial philosophies, such as restorative justice, will be able to transform the regimes (Freiberg, 2010). We have already indicated that the restorative approach is very effective in responding to the victims' needs (see 1.1.2.2.). In the following sections, we will identify how the application of restorative justice in Canada and in Belgium could theoretically correspond to victim concerns. Using the data we collected, this issue will be empirically addressed in chapter 4, 5 and 6.

2.2.1. The state of affairs in Canada

2.2.1.1. Restorative justice for minor offences through diversionary policies

> 'Since 1974, victim offender mediation programs have grown throughout Canada (…). By 1996, restorative justice began to attract the attention of political and government decision-makers. For the first time, it was officially recognised by Federal/Provincial/Territorial Ministers and Solicitor Generals responsible for justice in Canada. (…) (T)he 12 Ministers recommended that all jurisdictions encourage the development of restorative justice and mediation approaches (Miller-Aston & Harris, *s.d.*)'.

Canada has a rich restorative justice practice and was at the forefront of the design of the UN declarations on restorative justice (Cormier, 2002). Nevertheless, to date, there are no specific national, provincial or territorial legal regulations for the restorative practices and

restorative measures as a resource for judicial actors with regard to crime committed by an adult offender. Reparation and restoration are recognized as objectives of the criminal justice system, but no law has been created for the actual institutionalization of restorative justice. There is neither a legal prohibition nor a formal instigation to facilitate restorative measures. Rather than institutionalizing restorative justice or a particular restorative practice, Canada merely recognized reparation as an objective of the criminal justice system (Jaccoud, 2007b). The implementation of this reparative objective is left to the provinces and territories, resulting in a more dispersed and diversified application of restorative programs.

Bill C-41 (an act to amend the criminal code and other acts in consequence thereof of 1995) is referred to when looking for federal legal justification for restorative initiatives with regard to adult offenders. It authorizes the use of community-based sentencing alternatives and conditional sentences by emphasizing incarceration as a last resort as well as the need for reparation of the harm done to victims (Bill, C-41, section 717).[8] Alternative measures apply for those offences not punishable with a sentence exceeding two years of imprisonment. Compliance with the conditions proposed by a judge, *e.g.* reparation to the victim, implies the suspension of punishment. This national regulatory document does not specify what alternative measures are, which has to be done by the Attorney General (Bill C-41, section 717(1)(a)) and the provinces. While this Bill concerns diversionary measures to replace punishment where appropriate, it holds the potential to promote restorative justice since it includes the need for reparation to the victim and the community (Roberts, 2001), although it does not have any provisions on the involvement of victim in the application of an alternative measure. In this perspective, restorative justice has thus been recuperated within a diversionary logic, and this only with regard to minor offences.

[8] Bill C-41 also contains regulations regarding the victim impact statement (Bill C-41, section 722) and the restitution order (Bill C-41, section 741).

The 2002 law concerning juvenile offenders follows the same diversionary trend, but explicitly includes restorative justice interventions as an alternative measure. This result came from a long evolution from the welfare model of the 1908 Juvenile Delinquents Act ('*save*' the '*misdirected*' youngsters who committed crimes) to the justice model of the Young Offenders Act in 1984 (which combines the recognition of the needs and vulnerability of minors with the emphasis on the protection of the public) (Rosen, 2001), back to the orientation towards treatment and reintegration and alternative measures, including restorative justice, with the 2002 Youth Criminal Justice Act (Goetz, 2001). The 2002 act reflects the idea that '*(t)he system is to reserve its most serious interventions for the most serious crimes, and to reduce the (...) over-reliance on incarceration for non-violent young persons* (Goetz, 2001, p.2)'. Therefore, it offers possibilities to develop alternative measures and out-of-court responses (termed 'extrajudicial measures' in Bill C-7, part 1), such as restorative justice for the least serious of offences, while custodial and non-custodial sentences remain available as well. It promotes measures that reinforce respect for social values, are meaningful for the minor, respect his needs, and encourage repair of the harm done to the victim and to the society. Conferences, inspired by the family group conferences in New Zealand and Australia, are mentioned as an extrajudicial measure (Goetz, 2001). Full and free consent of young offenders to participate is necessary and they must accept responsibility for the offence (this admission not being allowed as evidence in an eventual appearance before the court).

Note that for adult as well as for juvenile offenders alternative measures, including restorative interventions, are reserved for non-violent and less serious offences, probably due to its direct link with diversion. The potential recuperation of restorative justice in a diversionary framework would imply an outcome-oriented focus for restorative justice, as diversion can only be achieved if an agreement is reached. Its success is then defined in terms of outcome only, instead of in terms of process. Also, the absence of a specific formal framework for restorative practices might inhibit its advancements with regard to

violent crime, despite encouraging research results in this matter. In practice, however, Canadian restorative practices are less associated with diversion than what has been opted for on the policy level. Many restorative programs operate outside of this legal framework.

2.2.1.2. Dispersed and autonomous Canadian restorative practices for violent crime

According to an online worldwide overview of restorative justice practices, in Canada, as in the rest of North America, restorative justice practices arose out of experiences with indigenous justice as well as out of discontent with the justice system and the need to meet victims' concerns. The involvement of religious organizations has also been very important in the development of grass roots programs in restorative justice (www.restorativejustice.org, last up-date September 2006). Restorative programs are abundant, ranging from local and regional projects on victim-offender mediation for juvenile and adult offenders, over sentencing and healing circles to conciliation groups and peer mediation in schools. Due to the absence of a specific legal framework for restorative justice, practices tend to be dispersed, decentralized and fragmented. The practice regarding violent offences is dependent on grass roots projects and an autonomous development, hence potentially being less stable.

One interesting example of this situation is the Collaborative Justice Program (CJP) that operated in Ottawa, Ontario, in collaboration with the Canadian Church Council on Justice and Corrections and the Ottawa prosecutorial services. It was centred specifically on serious crime, initially only at a post-sentence stage. After an exploratory evaluative research regarding the potentiality of VOM in a pre-sentence phase by Rugge, Bonta and Wallace-Capretta (2005), demonstrating the favourable impact of pre-sentence VOM on the victim-participants' as well as offender-participants' well-being, the expansion of CJP to a post-charge/pre-sentence stage as a complement to the judicial procedures was approved and executed. However, in 2004, the federal funding for this local program was not

renewed. It still receives financial support for its restorative programming towards juvenile offenders and for less serious adult crime cases. Since 2004, the service is struggling to stay afloat and had to reduce its staff as well as its offer. As such, it can no longer accept violent crime cases whether at a pre- or post-sentence stage (www.collaborativejustice.ca, last update 2006; Don Butler, The Ottawa Citizen, Septembre 12, 2004).

For violence committed by adult offenders, the application of restorative measures is now restricted nationwide to a post-sentence stage. On the national level, a federal post-sentence VOM-program is coordinated by the Restorative Justice Division of the Correctional Service of Canada (CSC), responsible for the execution of federal prison sentences, *i.e.* those exceeding two years of imprisonment. It is also the only initiative on VOM being uniformly applied in the different Canadian provinces with regard to adult offenders of violent crime. Initial experiences include Victim-Offender Mediation Program in the post-incarceration stage that started in the early 90's in British Columbia (www.cjibc.org). This program now operates under the nationwide victim-offender mediation program directed by the CSC, and was relabelled the 'Restorative Opportunities (RO)' program (Correctional Service of Canada, 2008b). The outcome of the mediation has no formal impact on the sentence or on parole and is, therefore, non-diversionary (Correctional Service Canada, 2008c). In this sense, the offer corresponds with what Umbreit calls a dialogue-driven, humanistic approach to mediation, wherein the focus is fixed on processual factors and peacemaking rather than on a concrete outcome (Umbreit, 1997), and hence exceeds the reductionist provisions of the Canadian legal framework on extrajudicial measures.

The RO program can be initiated both by victims, or by services representing them (*e.g.* victim support services, police) or by services representing the offender (correctional institutes, parole services). Victims, whose offender has been convicted to a federal prison sentence, and thus serves time in a federal institution directed by the CSC, can register at the CSC or the National Parole Board, in order to claim their right to receive victim-related

information about the offender and the execution of the sentence, which will then be provided by the National Victim Services Division. This division's assignment includes the provision of information regarding the RO program as well as the redirection of victims' requests for this program to the Restorative Justice Division at the CSC.[9] At the Restorative Justice division, all offender-initiated requests for the RO program are studied for their appropriateness and to determine the offender's motivation. Finally, every victim-initiated request and approved offender-initiated request is redirected to a designated mediator in the region where the victim or the offender resides. This mediator will then contact both parties of the referred case and informs them of what the offer consists of and what the expected results and consequences may be. The mediator will again explore the expectations and motivations of both victim and offender.

An interesting alternative for VOM for victims of violent crime are the VOE programs, in which victims meet with surrogate offenders. This initiative does not require the victim to disclose the crime to the police. Even if a judicial file has been opened, the VOE can take place irrespective of the judicial advancements and the meeting only include surrogate offenders. The VOE are illustrated by two local, Quebecois initiatives: the *Violence Interdite Sur Autrui* (VISA) program, and by the *Rencontres Détenus-Victimes* (RDV).

Firstly, VISA is a multi-step victim awareness program for convicted and detained sex offenders in the federal correctional institute of *Montée Saint-Francois*, in Laval, Quebec. One of the steps consists of a victim or several victims of sexual aggression witnessing of the consequences of victimization. These victims are selected and referred to the program by the psychologists working at the *Centre de Prévention et d'Intervention pour Victimes d'Agression Sexuelle* in Laval, Québec (CPIVAS), a centre that specializes in the support for victims of sexual aggression (as well as prevention and formation of police officers

[9] The referral procedure for the British Columbia VOMP residing under the federal RO program differs: the administration of the referrals was left in the hands of the Fraser Region Community Justice Initiatives Association in Langley.

regarding the consequences of sexual assault). Participation by victims in VISA is, hence, integrated in their treatment. When a selected victim agrees to participate, she is prepared by her caseworker at CPIVAS for the meeting with the offenders. The program involves a single visit to prison to meet the offender-participants to VISA, in the presence of the support worker of CPIVAS and social support staff of the prison. Follow-up for the victim is again provided by the CPIVAS caseworker. This initiative allows victims, who are not able or willing to meet their own offender (for instance because they have not filed a complaint against their offender), ask questions to surrogate sex offenders regarding on why they commit sexual offences and describe to the offenders the impact of these types of crime on the victim's life.

Secondly, the RDV are coordinated by the *Centre de Services en Justice Réparatrice* (CSJR) in Montreal, Quebec. These victim-offender encounters in prison bring together a small number of surrogate victims and offenders of similar types of crime (ranging from minor to severe violence). As is the case for the victim-offender encounters in the framework of VISA, these meetings allow a dialogue between victims and prisoners, in which the offenders can answer victims' questions and can learn about the consequences of victimization, in the objective of raising victim awareness for offenders and providing conciliation for victims. In contrast to the VISA program, the RDV imply a victim-offender encounter once a week (up to ten sessions). Each session is facilitated by staff of the CSJR and involves victims and offenders telling their story and asking questions. The CSJR depends on self-referral or referral by other organizations and services, following which the CSJR will look for matching offenders in the cooperating correctional facilities.

Restorative measures occupy a more prominent place as extrajudicial measures in the framework of the Youth Criminal Justice Act. It explicitly mentions the use of restorative measures as diversionary, but suggests using them for non-violent offences only. The federal legal framework leaves room for the provinces to organize its implementation. In

Québec, for instance, the Organizations for Alternative Justice (OAJ), already created in the light of the Young Offenders Act of 1984 (Charbonneau & Béliveau, 1999), ensure the diversion of young offenders away from the judicial system. These are responsible for the support of juveniles having to comply with an extrajudicial measure such as community service or treatment as well as victim-offender mediation, gradually gaining ground. In 2001 a cooperation agreement between the *Association des Centres Jeunesse du Québec* and the *Regroupement des Organismes de Justice Alternative* was signed. This agreement centres on the use of VOM and FGC (Wemmers, 2003). Cases are referred to the OAJ's either by the *Centres de Jeunesse* or by the prosecutor. Subsequently, the victim(s) and offender in the referred file are contacted respectively by the mediator of the OAJ and the caseworker at the youth centre to inquire about the willingness for participation, which is voluntary for both parties. When both parties agree, they can choose between direct mediation, *i.e.* a face-to-face meeting with the offender, and shuttle mediation. This can result potentially in apologies, financial restitution, damage reparation, community work, *etc*. If the mediation or conciliation measure is successful in reaching an agreement, judicial action can be dismissed following the mediator's report to the prosecutor. In compliance with the 2002 Youth Criminal Justice Act, in which alternative measures are suggested to be used in non-violent offences, the restorative measures are mainly applied in property offences (Martire, 2005), although the 2001 cooperation agreement does not limit the use of restorative interventions to non-violent offences.

2.2.1.3. It's a bumpy ride

Reports on the use of restorative interventions by judicial actors, the chief referring agents in the diversionary approach to restorative justice, are pessimistic. Landreville, Lehalle and Charest (2004) observed that the condition of reparation of damages in the framework of the conditional sentence, provided for by diversionary Bill C-41, was highly underused (only applied in about 4% of the cases in which a conditional sentence was ordered in

Québec between 1999 and 2002). Moreover, in his study on the impact of the policy on depenalisation, decriminalization and dejudiciarisation in Québec, Noreau (2000) found that lawyers are generally more eager to utilize such diversionary mechanisms than public prosecutors. Public prosecutors as well as judges do not seem very keen to apply alternative measures, such as restorative ones, not even in a diversionary optic reserved for minor offences. There are reports of limited use of pre-sentence restorative interventions for offences committed by juveniles, framed in the diversionary logic of the Youth Criminal Justice Act, which are mainly applied in property offences (Martire, 2005; St-Louis & Wemmers, 2009). If resistance applies to the restorative approach in minor offences, resistance is likely to be even stronger with regard to restorative justice in violent crime.

Landreville (2007) suggests that such observations can be explained by the duality of penal policies in the last 20 years:

> 'Si dans les années 1960 à 1985 environ, les commissions et comités d'experts ainsi que les élites politiques mettaient l'accent sur les principes de justice, d'équité et de modération en droit pénal, si l'emprisonnement était vu comme une mesure de dernier ressort, si on favorisait la réhabilitation et l'on préconisait les solutions de rechange à l'incarcération, depuis les vingt dernières années la protection de la société devient le nouveau leitmotiv. Il s'agit surtout maintenant de répondre aux préoccupations des citoyens, de faire la lutte à la criminalité, de neutraliser les délinquants dangereux, particulièrement les "prédateurs sexuels", et, d'une façon démagogique, de prétendre répondre aux préoccupations des victimes en augmentant la sévérité des peines. (…) (O)n a vu se développer une tendance duale dans les législations. D'une part, en effet, il y a une augmentation de la sévérité des mesures pénales pour ceux qu'on qualifie de délinquants violents (…), alors que sont apparues des mesures moins draconiennes, ordinairement des mesures de rechange à l'incarcération, pour les délinquants primaires et ceux qui ont commis des infractions contre les biens (Landreville, 2007, p.41-42)'.

Ambivalent penal policy would be the result of a combination of neo-liberal and neo-conservative considerations, respectively resulting in measures centred on rehabilitation and on punishment (O'Malley, 1999; Gray & Salole, 2006).

But the use of restorative practices is not only dependent on the willingness of judicial actors to be applied as alternative measures, especially since we are considering its use for violent crimes, a practice for which no legal framework is available and which is in the field restricted to a post-sentence phase. In this perspective, referral of victims of violence to VOM or VOE can also be done by victim support workers. However, referrals to these non-diversionary programs by victim support workers are also low. For instance, the federal post-sentence Restorative Opportunities program of the CSC saw a steady increase in referrals and requests from victims and offenders but is still low: in 2003-2004 the program received 23 referrals and requests, and 83 referrals and requests in 2008-2009 (note that not all of these became actual mediation procedures, due to, for instance, a refusal from the other party) (personal communication with RO-coordinator at CSC, June 2009).

To date, victim support workers appear rather unenthusiastic to refer clients to restorative practices, whether VOM, FGC or VOE. For instance, the results of a survey conducted among the staff of the Quebecois *Centre d'Aide aux Victimes d'Actes Criminels* show that '*victim support workers are skeptical of restorative justice programs and reluctant to refer victims to them. Their main concern was the risk of secondary victimization (...). They emphasized the need to* protect *victims from further suffering rather than to expose them to greater risks* (Wemmers & Cyr, 2005, p.529, emphasis added)'. The fact that restorative justice programs are often seen by victim supporters as offender-oriented, and hence holding the risk of using the victim to meet crime control objectives (Wemmers & Cyr, 2006b) or as '*instruments pédagogiques* (Charbonneau & Béliveau, 1999, p.70)' when it concerns juvenile offenders, does not help the matter either. Some victimologists, such as

Stubbs (2002) and Herman (2005), find the use of restorative justice in, for instance, cases of domestic violence inappropriate. In line with such reservations, in a 2007 edition of Quebec-based *Les Cahiers de Plaidoyer Victimes*, two spokespersons of the *Centres d'Aide et de Lutte Contre les Agressions à Caractère Sexuel* (CALACS) and the *Regroupement Provincial des Maisons d'Hébergement et de Transition pour Femmes Victimes de Violence Conjugale* clearly take position against offering restorative justice to female victims of violence. They describe it as demeaning of the victim's suffering and as only wanting to avoid for the offender to be punished (Roy, 2007; Riendeau, 2007). Since restorative justice in Canada is only legally framed in a law on diversionary measures, it is a legitimate concern, but the potential benefits for victims of crime as well as the non-diversionary nature of many restorative programs, such as the RO-program, VISA and the RDV, are not taken into consideration. The restorative model should not be rejected because of its political recuperation in a diversionary framework. Doré (2008), a practitioner affiliated to a Quebec-based support services for victims of sexual aggression, highlights that the danger for revictimization might lie in the concrete implementation of restorative justice, rather than in the idea of restorative justice itself.

2.2.1.4. Violence victims' concerns in the Canadian 'post-adjudication mainly' model

The absence of a specific legal framework for restorative justice for any type of crime and the unavailability of VOM for violent crime in a pre-sentence phase clearly account for a restricted accessibility of restorative interventions to victims of violent crime. The resistance of victim support workers to refer clients to restorative initiatives also adds to this restricted accessibility. Considering that victims generally do not actively request help or certain services (Shapland & Hall, 2007), outreach is advisable but the central referring agents, *i.e.* the victim support services, seem to have reservations with regard to the restorative approach for dealing with violent crime. The focus seems to be on the protection of the victim.

Victim support services are often forced to focus on the most vulnerable victims (Goodey, 2000). These vulnerable victims are most likely to suffer the loss of control and trauma, usually at its peak when they get in touch with the victim services (Symonds, 1980). For these victims, victim-offender mediation is not always a feasible option. A confrontation with the offender requires victims to show their emotions and hence to present themselves in the most vulnerable way. The first priority, therefore, is to deal with the psychological consequences of the crime, including the loss of control. In this regard, the victim support services will offer emancipatory support, encouraging victims to regain control in their daily routine. Put differently, victim support services want to avoid, at all costs, the confrontation between vulnerable victims and their potentially manipulative offenders. In order to avoid a 'type II error', or the false negative assumption that a victim is capable to meet the offender but is actually too vulnerable to do so, they seem to prefer not to suggest restorative justice to any of their clients, even though such a confrontation might in itself be empowering (see 1.1.2.2.). Empowerment is seen as a precondition for participation in a restorative intervention rather than as a result of it.

The Canadian model might well be based on the legitimate concern for psychosocial support as a priority and the protection of the victim from being confronted with a potentially manipulative offender. But protection is only one among multiple victim needs. Theoretically speaking, the Canadian model denies victims of violent crime early opportunities for involvement and to get answers to their questions only the offender can answer and, hence, leaving them in uncertainty about the offender's sense of responsibility or their fear for the offender's revenge for having disclosed the facts, at least until the case is brought before a judge. Often many years pass before adjudication is done, all the while keeping victims waiting and mulling over the events. For instance, observing that sexual assault victims often experience a sense of self-blame, inhibiting their healing (Resick, 1987), relieving these victims from this responsibility by having the offender confirm his responsibility, could be opportune.

2.2.2. The state of affairs in Belgium

2.2.2.1. The introduction of restorative justice as a complement in the Criminal Code

As opposed to the indirect inclusion of a restorative objective in the Canadian legislation, in Belgium restorative measures have explicitly been inscribed in the criminal code for dealing with crime committed by either adult or juvenile offenders. The first steps towards the institutionalization of restorative justice were taken in the early 90's after experimenting in the field with the restorative approach on the initiative of social services, often with the support of regional communities and research groups at different universities (Aertsen & Peters, 2003).

The law of February 10th 1994 introduced penal mediation, a measure available before prosecution in cases concerning adult offenders, in the Belgian Code of Criminal Procedure. The federal regulation of penal mediation was essentially intended to expand the public prosecutor's arsenal of diversionary measures, applicable to offences that are normally not punished with a sentence of more than two years of imprisonment. It has its roots in the populist critique that petty crimes are disruptive but often not prosecuted. It was argued that it was necessary to respond to petty crimes rather than unconditionally dismissing them from prosecution (De Souter & Van Camp, 2010, forthcoming). In the framework of penal mediation, compliance with one or more of the four possible conditions (mediation with the victim, training, medical or therapeutic treatment or community service) results in the dismissal of prosecution. The application of the measure does not necessarily involve the victim or implies a communication process between the conflicting parties either; this is only the case when the prosecutor proposes the use of the condition of mediation with the victim. Communication between the victim and the offender did not occupy a central place in the practice of penal mediation. Magistrates seemed to use penal

mediation as an instrument to punish petty crime offenders instead (Hanozin *et al.*, 1997; Adam & Toro, 1999). The law, therefore, has been described as a misuse of the restorative justice language and as disconnected from the real interests of victims (Hanozin *et al.*, 1997). According to Snacken (2001) the adoption of the law on penal mediation is an excellent illustration of the Belgian ambivalent penal policy of the last decades. '*Il reste que la médiation pénale peut donc constituer une alternative pour des peines de prison jusqu'à 2 ans. Mais elle peut tout aussi bien ne remplacer que des classements sans suite, autre but du législateur, afin de contrer l'impression d'impunité que ceux-ci donnent aux auteurs et victimes d'infractions* (Snacken, 2001, p.113).' It directly inscribes itself in a diversionary logic, in an inquisitorial regime this time, motivated by the need to keep the penal system up and running and to reduce the use of imprisonment, as predicted by Marcus and Goldstein (1977).

However, the introduction of a terminology borrowed from the restorative justice ideology in the Code of Criminal Procedure, as well as the intention of the assistant advisors on penal mediation and the College of prosecutor-generals to re-orient the penal mediation practice towards an application closer to the restorative justice model, is meaningful (Lemonne & Van Camp, 2005). It illustrates openness in the field to restorative justice practices. It also encouraged the further development of restorative justice policies. As a reaction to the observed non-correspondence of the penal mediation with restorative justice, the Minister of Justice funded a national victim-offender mediation project in the late 90's. This project offered mediation to victims and offenders of any type of offence at every stage of the judicial procedure. The implementation of the offer was in the hands of two non-profit organizations, Suggnomé in Flanders and Médiante in the French Community. Positive experiences with this experiment finally led to the adoption of the Law of June 22nd 2005 introducing some provisions concerning mediation in the Preliminary Title of the Code of Criminal Procedure.

This 2005 law describes the general offer of VOM (named mediation for redress in the 2005 law to distinguish it from the penal mediation in the 1994 law) available at the stages of investigation, prosecution, trial and execution of punishment. It neither specifies nor excludes certain types of offences for mediation. Mediation for redress is described as a complementary procedure, independent of the traditional criminal proceedings. The procedure does, in other words, not imply the dismissal of the criminal proceedings and does not inscribe itself in a diversionary logic. The outcome of the mediation process does not have to be taken into account by judges, but they can do so if they find it opportune. In other words, the Belgian VOM offer corresponds with the idea of mediation as pacifying and centred on communication between the parties involved (De Souter & Van Camp, 2010, forthcoming). It hereby complies with Recommendation R(99)19 of the Council of Europe concerning mediation in penal matters and with article 10 of the European Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings. The execution of the law on the general offer of mediation for redress of 2005 is orchestrated by Royal Decree of the 26th of January 2006 specifying the composition and functioning of a Deontological Commission on Mediation and Royal Decree of the same date specifying the criteria for the recognition of mediation services by the Minister of justice. The two aforementioned non-profit organizations that were coordinating VOM, Suggnomé and Médiante, were granted formal recognition as designated mediation services.

The legislator clearly intended to maximize the access to the restorative offer by promoting systematic and proactive information and referrals to VOM by judicial actors. The concrete manner in which this has to be done has, unfortunately, not been specified in the 2005 law on the general offer of VOM. In practice, the implementation and execution of this obligation to inform parties about the restorative possibilities differs according to the judicial district and does not meet the proactive ideal described in the law everywhere (see 2.2.2.2).

Restorative justice is integrated in the inquisitorial judicial regime as a complementary offer introduced to the parties by the judicial actors, but is executed by external mediation services. It is, therefore, an illustration of the dual-track model (see 1.1.1.3.), neither conflicting with the inquisitorial elements nor with the restorative justice fundaments regarding the importance of communication, conflict-resolution and the involvement of the different parties. The discretion of the judge to have the restorative intervention impacting his decision is maintained. The restorative intervention does not automatically have an appeasing impact on the judicial decision. The focus, especially in violent crime cases, is on communication and appeasement rather than on reaching an agreement. This suggests that procedural aspects are considered to be more important than concrete, measurable outcomes.

The same trend was followed in the Youth Act of May 15th 2006, replacing the 1965 Youth Protection law. Following the 2006 Youth Act prosecutors and judges are forced to explore the possibility of mediation or conferencing and the willingness of the parties to participate in these alternative options, in all cases except for those concerning murder. Only when these options seem to be impossible or undesired by the parties and restorative options have, hence, been exhausted, can the judicial file be processed in the traditional manner. In other words, theoretically, this law proposes that the traditional system acts as a back-up system when the restorative options fail, illustrating the idea of the safety net model or Braithwaite's responsive regulatory pyramid (see 1.1.1.3). It goes further than merely proactively offering restorative justice options, as was done in the 2005 law on victim-offender mediation for adult offenders. It actually imposes the restorative way of dealing with the juvenile offence, not on the parties involved, since participation is voluntary, but on the judicial actors that have to consider and exhaust alternative options before resorting to traditional proceedings. Furthermore, while restorative interventions have a complementary rather than a diversionary status, the youth law mentions that the result of the restorative intervention cannot have a negative impact on the final judicial decision.

At the same time, the 2006 Youth Act also introduced the use of imprisonment for juveniles older than 16 that committed violent crimes, again a first in Belgian juvenile justice.[10] It, therefore, not only diverted away from the pedagogical ideal of protection to restoration and pacification, but also led to a punitive approach for certain offences. This approach illustrates the ambiguous consideration policy makers have for alternative justice, something that had been observed by Snacken concerning the general reform of criminal justice: '*Les 'nouvelles mesures pénales' (...) ne sont pas issues d'une conception législatives pénale cohérente. Elles mélangent divers modèles de justice: justice réparatrice ancrée sur une justice retributive et de traitement* (Snacken, 2001, p.132)'.

In sum, the Belgian policies allow and even encourage the application of the restorative approach in both violent and non-violent crimes, either committed by a juvenile or an adult offender, as a complement to the traditional criminal justice proceedings. This perspective is also reflected in the field.

2.2.2.2. Centralized Belgian restorative practice for any type of crime

Since the 80's, there has been extensive experimenting with restorative justice in Belgium, both for juvenile and adult offenders (Willemsens, 2004). Following the positive experiences with these projects, restorative justice practices have been expanding and are currently offered at the police stage, the level of the public prosecutor (before prosecution) and of the court (after prosecution) as well as the level of the execution of the sentence, *i.e.* during incarceration. Due to the availability of a federal legal framework, the Belgian restorative practice is centralized and, therefore, more potentially uniform than the Canadian restorative field.

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[10] The age of full legal responsibility is 18.

As previously mentioned, two umbrella organizations (Suggnomé and Médiante), who had been active in the field of VOM for a long time and were involved in the design of the law on the general offer of mediation of 2005, have been formally designated as the coordinators for VOM in respectively the Flemish and the French community, and have been accredited to receive funding from the federal government. These organizations coordinate local mediators and provide training, organize meetings between local mediators and maintain contacts with other local services. In this sense, a uniform service and continuity in practice as well as back up for local mediators are assured. Local cooperation agreements and district council meetings, with the different local partners such as prosecutorial services, police and victim support services, have been developed to accompany the implementation of VOM in the different judicial districts. These are important to ensure referrals to the local mediator.

The referral procedure to the local mediation services is fairly straightforward: only the conflicting parties themselves (victim and offender, as well as their relatives) can initiate a victim-offender mediation procedure at any stage of the judicial procedure. Accordingly, the judicial actors (prosecutor, investigating magistrate and judge) are required by the law of 2005 to proactively provide victims and offenders with the necessary information on the restorative way to deal with the offence. They can also refer victims and offenders to the designated mediation service if the parties express an interest in mediation. Moreover, the judicial actors can even propose victim-offender mediation to the parties involved if they think it to be a suitable option. However, mediation cannot be imposed on the parties. The restorative offer is imposed on the judicial actors as something they have to keep in mind and as something they have to tell all victims and offenders about. Or put differently, it corresponds with the idea of informed consent: if everyone is aware of the different ways to deal with the offence, and receives complete and clear information about the procedures

and possible outcomes, every party will be able to make an informed choice to accept or reject the restorative offer.

The referring practice differs in the various judicial districts and does not always comply with the paper ideal of the proactive information to all victims and offenders. In one district, every victim and offender is systematically informed about the availability of victim-offender mediation, as it is indicated on the invitation to attend the trial. This can be seen as a passive provision of information. In most judicial districts, an explicit invitation to consider mediation is sent to the parties in files in which the offender admits his involvement and the victim is known. The local mediator receives a copy of the invitation letter. This option represents the most active interpretation of the duty to inform. In some districts, such an invitation letter is only sent to the victim and the offender if the prosecutor responsible for the file finds mediation opportune for these parties. Sometimes this selection is done in cooperation with the local mediator. In some districts, referral to the mediation service is only done on request of the parties involved. In 2007, the *Collège des Procureurs-généraux* created a working group on a uniform implementation of the duty of judicial actors (including policemen, prosecutors and other judicial staff) to inform judicial clientele on their rights, the procedures and the available services, including VOM. So far, this resulted in a uniform attestation of registration of a complaint at police level. This form is automatically generated when a copy of the police statement is printed for the complainant and contains information about one's rights as well as the coordinates of different services available, such as the victim support service and the mediation service. The design of similar forms at the level of other judicial services has been planned. Also, the working group strongly suggests that the delivery of these forms is accompanied by oral, more direct and active information and referral to the services available to victims and offenders. The mere written mention of services on forms is considered to be passive and in itself insufficient (COL 5/2009).

While the law on mediation of 2005 only describes the role of judicial actors regarding the provision of information about the victim-offender mediation option, Suggnomé and Médiante point to the crucial role of other professional services, such as the police, lawyers and victim support services, in informing their clientele about mediation and to refer them to the designated services (Médiante, 2006; Suggnomé, 2007).

VOM is available at the different stages of the judicial procedure: before and after prosecution, including during the execution of the punishment. In the latter stage, VOM can accompany a request for Suggnomé's redress fund. An inmate can apply for this fund to receive a maximum of 1250 Euros in exchange for work for an external social-profit organisation, which they can use to compensate their victim. The maximum amount of money for compensation is low and therefore indicates that the main focus is not on the financial compensation as such, but rather on the responsabilization of the offender. The financial compensation is used to open communication with the victim. Only if the victim is willing to participate, the offender will receive assistance to earn the compensation and mediation (direct or shuttle) will be facilitated (De Souter & Van Camp, 2010, forthcoming).

The situation for juvenile offenders is comparable, but the use of restorative measures is even more encouraged through the obligation for judicial actors to actively verify the possibility of VOM or FGC, instead of simply informing parties about their restorative options. The first experimenting with restorative projects was initiated in the youth protection field, serving a pedagogical objective (Lemonne & Van Camp, 2005). Now, juvenile offenders and their victims can use VOM or FGC to address the crime either before or after prosecution. These practices are coordinated by umbrella organizations, *OndersteuningsStructuur Bijzonder Jeugdzorg* (OSBJ) and *Arpège*, funded respectively by the Flemish and French community (instead of them being funded by the federal

government, since youth well-being and care is a community responsibility) and executed by local, community-funded youth care agencies.

The different Belgian mediation services use similar working procedures, which do not differ from VOM-practices elsewhere. Mediation either includes a face-to-face meeting between victim and offender (and their relatives in case of an FGC) or indirect communication via the mediator. A face-to-face meeting is always preceded by substantial preparation of the victim and offender by the mediator, helping them formulate their questions and preparing them emotionally for the confrontation. Either party can choose to be accompanied by a lawyer, who cannot, however, intervene in the dialogue. If an agreement is reached, the victim and offender can choose to have it added to their judicial file. If no agreement is reached or the parties do not want to have a copy of it added to their judicial file, the mediator will present the judicial actor responsible with a statement that mediation has taken place, without revealing any substantial elements of the meetings or the agreement (as the preparatory and mediation meetings are confidential) or the reason for not having reached an agreement should that be the case.

2.2.2.3. Crunching numbers

The implementation of the laws of 2005 and 2006, respectively introducing restorative measures in the criminal justice system as complementary in cases concerning adult offenders and as a first resort in cases concerning juvenile offenders, has not yet been subjected to a systematic empirical assessment. As far as mediation in crime committed by adult offenders is concerned, the activity reports of both Suggnomé and Médiante suggest that their caseloads have increased[11], but they also suspect that their clientele has not yet

[11] Number of requests for Suggnomé: N(2004)= 639; N(2005)= 857; N(2006)= 948; N(2007)=858; N(2008)=1232; N(2009)= 1329. Number of opened mediation files (both victim and offender agreed to meet

reached saturation either (Suggnomé, 2007). It is safe to assume that VOM only still deals with a minority of the adult criminal files. The majority of requests concerns files at the stage of prosecution. In other words, most victims and offenders who participated in VOM were informed about the offer by the public prosecutor. It is, however, not clear whether this is the result of the law on the general offer of 2005, as even before the adoption of this law public prosecutors were already the most important referring agents to Suggnomé and Médiante (Suggnomé, 2005, 2006, 2007; Médiante, 2005, 2006). Moreover, Suggnomé suggests that the judicial actors in some districts are more willing to take up their responsibility in notifying victims and offenders about victim-offender mediation than the actors in other districts, resulting in the non-uniform referral practice that the services involved try to rectify, as described above (see 2.2.2.2). While the offer is proactive on paper, it is probably more accurate to describe it as reactive in practice at this time. Against all odds, there is no increase in the number of requests in the more supportive districts (Suggnomé, 2007). Suggnomé estimates that this lack of increase has to do with the fact that in these districts information on victim-offender mediation is provided by letter (instead of in person), rather than with the saturation of the number of victims and offenders that wish to participate.

The impact of the legislative framework should be even more important for juvenile justice, since VOM and FGC (called Hergo in Belgium) are presented as first resort options. The numbers of referrals to the mediation services in Flanders[12] do indeed suggest that there is an important increase in the number of referrals, despite again differences in the referring

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mediator) for Suggnomé: N(2004)= 589; N(2005)= 642; N(2006)=823; N(2007)= 746; N(2008)=1104; N(2009)=1191. Number of mediations in phase of execution of sentence for Suggnomé: N(2004)=62; N(2005)= 82; N(2006)= 121; N(2007)=172; N(2008)=189; N(2009)=197. Number of opened files (exclusive mediation in phase of execution of sentence) for Médiante: N(2000)= 86; N(2001)=114; N(2002)=173; N(2003)=108; N(2006)= 301; N(2007)= 357; N(2008)= 564. Number of mediations in phase of execution of sentence for Médiante: N(2001)=6; N(2002)=41; N(2003)=60; N(2006)=111, N(2007)=181; N(2008)= 258. In the activity reports of Suggnomé and Médiante we also see that there is an almost equal repartition between property crimes and crimes against a person (Suggnomé, 2005, 2006, 2007, 2008, 2009, 2010; Médiante, 2000; 2001; 2002; 2003; 2004; 2005; 2006, 2007, 2008).

[12] Data on the evolution of referrals to restorative interventions are not available for the French Community.

enthusiasm in different judicial districts in Flanders.[13] The increase, while much appreciated by the mediation services, has them requesting more staff. Interestingly, while there is a spectacular increase in the number of referrals to the mediation services, the number of referrals resulting in an actual completed mediation procedure decreased. The main reason for the mediation procedure to be incomplete is the refusal of one of the parties to participate according to the OSBJ (2008). Scientific research should be conducted to reveal whether this effect is due to saturation of the mediation services' clientele or other factors.

Moreover, in Belgium, the penal policy has been described as ambivalent (Snacken, 2001), which would be another cultural factor influencing the implementation of restorative justice. The Belgian combination of an increasing juridification of social issues with the call for dejuridification and out-of-court settlements makes for a confusing situation (Parmentier & Van Houtte, 2003). As long as there is no coherent penal policy, any type of innovation, be it in a restorative or another perspective, will increase the confusion and the judicial actors' discretionary authority, implying that reform in practice can go either way. Suggnomé and Médiante recognize that there is still a lot of sensitization to do towards the different judicial and other professional services involved (Suggnomé, 2007, Médiante, 2006).

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[13] Most referrals to mediation and Hergo are done by judicial actors. The OSBJ notes differences in the number of referrals in the different Flemish judicial districts. 1604 mediation files opened in 2002 and 1542 in 2003. More detailed information is available starting in 2004. In 2004, 1990 juveniles were referred to mediation. These referrals represent 1197 files with 1718 victims. In 2005, 1587 juveniles were referred to mediation, representing 975 files and 1446 victims. In 2006, 2147 juveniles were referred to mediation, which accounts for 1266 files and 1957 victims. In 2007, 3449 juveniles were referred to mediation (no other data available). In 2008, 4367 juveniles were referred, involving 3628 victims. In 2009, 4050 juveniles were referred to mediation (no other data available for 2009). Between 63 and 72% of the referrals from 2004 to 2008 concern property crime. Also in 2004 to 2006 in only slightly less than half of the files referred an actual mediation procedure was effectuated and completed. In the other files either the victim or offender refused, or the matter had already been settled, the mediation was terminated before completion by one of the parties, or one of the parties could simply not be reached. This number dropped to 37% in 2007 and to 33% in 2008. The data regarding the use of Hergo is less detailed but indicate an important increase in the number of referrals. All we know is that the services received 44 referred juveniles to Hergo in 2007, 76 in 2008 and 114 in 2009 (OSBJ, 2003, 2004, 2005, 2006, 2008, 2009).

Suggnomé (2007) observed that the psychosocial victim support services in their territory do not seem to systematically inform their clientele about victim-offender mediation. They only seem to provide information when the victims in their care explicitly ask for it. This illustrates the protective approach of Belgian victim support services to the offer, similar to the approach of victim services in Québec described earlier. However, the Belgian victim support services see themselves confronted with a law on a general offer of victim-offender mediation, in which they try to find their place. Belgian victim services have been closely cooperating with the mediation services in the search for the most efficient and harmless way to introduce victims to restorative justice (Van Camp, 2010).

2.2.2.4. Violence victims' concerns in the Belgian 'pre- and post-adjudication' model

Theoretically, the Belgian model's main objective is to introduce as many victims and offenders as possible to restorative justice, irrespective of the type of offence and the timing in the judicial proceeding. Different strategies are adopted to ensure that everybody knows about the restorative way of dealing with crime. It does so in order to comply with the victims' needs for voice, recognition and information. It is accepted that restorative justice can offer a substantial contribution to the victim's healing. Nonetheless, it is also acknowledged that not every victim will be served by the offer, and, therefore, it stresses the victim's right to refuse the offer. Accessibility and informed choice are key in the intention of the laws on restorative mediation. In this sense, the pre- and post-adjudication model allowing victims of any type of offences, including the most serious ones, to deal with the consequences of the crime in a restorative way, corresponds theoretically with the victims' needs for inclusion, reparation and insight in the events. It may fall short on compliance with the need for protection. The law does not exclude any types of offences and mediation can be offered to victims of any type of violent crime. Whenever an offender initiates a victim-offender mediation, the victim will be contacted, and vice versa. The offer might therefore be perceived as not responding to the victim's need for peace. Nonetheless,

the recognition of the need for protection lies in the possibility for the victim to refuse the offer and in the professionalism and sensitivity of the mediators to deal with victims of crime.

The caseload of the restorative justice services suggests that the number of referrals consistently increases, and this both for violent and non-violent crime. However, the practice does not always correspond with its paper ideal and not every victim has been informed about the restorative options. Despite the national and European legislation on restorative practices, the application of the restorative approach in the field remains marginal. The availability of a legal framework for restorative practices is not enough for its development; legislation needs to be accompanied by sensitization initiatives and training of victim support workers and judicial actors as potential referring agents (Aertsen & Peters, 2003). The cooperation agreements between the restorative justice services and the other players in the field, both judicial actors and victim service providers, might prove to be essential in this regard.

3. Methodology

The following sections cover a description of our qualitative research design (3.1.) and of our sample selection criteria (3.2.). We then present the general course of the recruitment of the respondents as well as some of the difficulties we encountered in the recruitment (3.3.). Our research sample will be described in paragraph 3.4., offering a general overview of the sample as well as a comparison between pre- and post-adjudication groups. Finally, we depict the general course of the interviews (3.5.) and present some final methodological reflections (3.6.).

3.1. A qualitative research design

3.1.1. Justification for the qualitative nature of the research project

The overall research objective is to contribute to the search for a theoretical explanation for victim satisfaction with restorative justice. While it has been amply shown empirically that victims are generally satisfied with their participation in a restorative intervention, the reason why has not been explained satisfactorily (see 1.1.2.3.). We wish to observe whether victims' perceptions of restorative practices compare to and comply with the subjective fairness observations made in the framework of the procedural justice theory. Procedural justice research follows a long methodological tradition of laboratory test and quantitative research methods. It has also been criticized for it. Lerner (2003) argues that social-psychologists seemed to have lost the true sense of the justice motive along the way due to overusing certain tried methods that '*generate responses that reflect normative expectations of* rational *self-interest, and fail to capture the important effects of the* emotionally

generated imperatives of the justice motive (Lerner, 2003, p.388; emphasis added)'. Central in his critique is that the experiments used in fairness research predominately involve artificial low-impact situations versus experience-based reflections concerning serious injustice. The latter more efficiently arouse true respondent emotions. An example of such research is Casper, Tyler and Fisher's (1988) study of fairness evaluation in actual felony cases, conducted in reaction to the critique that procedural justice studies are mainly lab studies.

Lerner still prefers lab experiments, albeit by using more vivid, high-impact role-playing scenarios. It seems fair to apply his argument, which is centred on the need for methods that permit looking not only for rational but also for emotional responses, to justify the use of qualitative research methods. These methods are specifically designed to capture personal reflections and emotions (Poupart & Lalonde, 1998), without having to artificially evoke them. We, therefore, transgress Lerner's argument in presenting a research design that centres on real-life experiences following high-impact situations, involving physical or psychological consequences or even the loss of a loved-one, and having the wronged parties retroactively reflect on them.

Qualitative studies on procedural justice are quite exceptional, while qualitative data might help to clarify the quantitative observations with regard to procedural justice that have been established so far. While it is generally acknowledged that qualitative research thrives best at the exploratory phase, it is equally acceptable to use qualitative data to offer insights on previously collected quantitative data, according to Allardt (1990). True to the constructivist stance, which views a social reality as constructed through dialectic exchange between respondents and researchers as well as between researchers, our set of findings then forms another building block in the entirety of scientific observations (Guba & Lincoln, 1994) and theories regarding fairness assessment and restorative justice.

Our empirical research objectives further explain the use of qualitative research tools. We want to learn whether restorative justice complies with procedural justice but we also want to indicate whether and to what degree restorative procedures move beyond the procedural justice determinants in being satisfactory. In other words, we are looking to superimpose the procedural justice template over the experiences of victims with restorative justice (being deductive), as well as find explanatory factors that are neither captured by the procedural justice template nor have been determined beforehand, but emerge from the raw data (being inductive, the central idea in the concept of 'grounded theory' developed by Glaser and Strauss, 1967). To allow new categories to come out of the data, in combination with pre-established categories, it has to be of a qualitative nature, *i.e.* consisting of the respondents' personal and unrestricted reflections. In contrast, quantitative methods only require pre-established variables, whose validity is tested in the field.

Such a methodological design requires what could be referred to as a mixed approach towards the data-analysis, as proposed by Huberman and Miles (1991). Their approach is focused on comprehensively describing a social reality as well as developing a theory (Laperrière, 1997). However, our objective was not to exhaustively collect data. Instead we let empirical and theoretical saturation guide our data collection. By inscribing our design within the mixed approach nonetheless, we emphasize the use of pre-established analytical categories (namely the procedural justice determinants) as well as new, inductive categories. In doing so, we transgress the rules of both the grounded theory approach (Strauss & Corbin, 1990) and ethnography.

Every project, whether grounded, ethnographic or other, is preceded by a study of the existing literature on the research topic and, consequently, a notion about what might be observed is formed. Qualitative research is in essence iterate and retroactive; it is important not to let an *a priori*, strictly aligned constructions of an object hinder the researcher to be open and receptive to *all* the dimensions of the object and for the input of the respondents

in the field (Deslauriers & Kérisit, 1997). Hence, we needed to assure that we would not be bound by the pre-established procedural justice variables and to be receptive for variables going against the procedural justice idea as well as for new categories. As such we occupied an emic position (Paillé, 1996), implying the centrality of and respect for the point of view and experiences of the respondents with restorative justice. The trick is to recognize preconceived assumptions and to approach and read the collected data as honest and complete as humanly possible, *e.g.* by not excluding extreme observations or contradictory data, and by allowing all the dimensions hidden in the data to surface (Guba & Lincoln, 1994). That is what makes qualitative research all the more interesting, as incidents and cases that deviate from the majority of the cases are just as valuable as the mainstream cases. They illustrate variation and the extent of the continuum in a conceptual category (in contrast to the marginal position of deviating cases in quantitative research). The recognition of such extreme and atypical cases will contribute to the internal validity of the research results (Huberman & Miles, 1991).

3.1.2. Research instrument of choice: the semi-directive interview

We used semi-directive interviews to collect the required data, since we wished to capture victims' experiences, opinions and impressions regarding the restorative offer without putting words in their mouths. The semi-directive interview is the optimal instrument in this research project as it offers respondents the space and time to freely reflect on the topic of restorative justice and express their perception (Poupart, 1997). Characteristic for semi-directive interviews is that the interviewee is seen as a privileged witness of a social reality. It also makes the researcher dependent on the respondent as a key informant. The semi-directive interview lets respondents reflect unreservedly on a certain theme, provides the researcher with profound information, and even permits the researcher to take into account some contextual factors possibly influencing the point of view of the respondent.

Therefore, an *a posterio* recognition of a potentially low reliability of one or more respondents, is an unavoidable yet acceptable hazard (Poupart, 1997).

We launched the interviews with one opening question:

(EN) « I would like you to tell me how you have experienced the procedures that you followed in response to the crime that has affected you. »

(FR) « J'aimerais que vous me racontez comment vous avez vécu les démarches entreprises en réponse au crime par lequel vous étiez affecté. »

(NL) « Kan u mij vertellen hoe u de procedures ervaren heeft die werden gevolgd in antwoord op het misdrijf waardoor u werd getroffen ? »

In compliance with the rules of qualitative research not to be suggestive and directive, the opening question is both specific and open, which is a difficult balance. For instance, we did not want to use the word '*appreciate*', in order not to presuppose that the respondent had found the procedures they used to have been favourable and to allow the respondents to reflect on what they had not liked about the procedures as well. We therefore used the verb '*experience*'. We also avoided the use of jargon. From previous research projects, we learned that victims generally do not use the correct terminology in identifying the services they had used, nor are they all capable of distinguishing the different services in objective and service provider (Lemonne, Van Camp & Vanfraechem, 2007). Therefore, we chose not to use the terms '*victim-offender mediation*', '*family group conferencing*', '*restorative justice*', and their French and Dutch equivalents. The non-specific reference to '*procedures followed*' permitted the respondents to reflect not only on the restorative intervention, but also on the judicial proceedings, useful in estimating where and how victims position the use of restorative interventions in relation to other procedures they were subjected to (note that both in Belgium and Canada, regardless of when the restorative intervention takes place, the restorative procedure is always complementary to the criminal justice procedures

and that victims who participate in a restorative intervention can therefore also be involved in criminal justice proceedings). In addition, allowing respondents to reflect on their experiences with the judicial procedures could potentially clarify what they might have been looking for in the restorative intervention and what motivated them to initiate or accept to participate in it. In other words, our opening question was flexible to allow respondents to provide feedback on all the procedures used. Finally, we did not use the word '*victim*' in our opening question to avoid labelling the respondents (Van Dijk, 2006).

Apart from the opening question, there were no other pre-structured questions asked during the one-time interview. A topic list was used to check the emergence of the theoretical variables derived from the procedural justice model. Also, at the end of each interview, an identification card was completed capturing the respondent's age, education, civil status, relation with the offender, type of crime, sentence given to offender, *etc.* (see annex 6). Merely in order to objectify their satisfaction with the procedures they used (judicial and restorative procedures alike), we asked the respondents to give the different procedures a score between 1 and 10 (1 being dissatisfactory and 10 being satisfactory). The purpose was not to add a quantitative set of data to our qualitative interviews, but to allow the respondents to reflect in a more objective way and one final time in the interview on their experiences.

3.2. Selection criteria

We focused our research on victims of serious crime. We defined these crimes as crimes involving physical or psychological violence. To delineate our selection criterion of violent crime more concretely, and to provide a guideline to the recruiters of respondents, we referred to the Canadian and Belgian Criminal Codes mentioning such serious crimes under different titles. The national Criminal Codes of the two countries in question are quite

comparable on the subject of the judicial qualification on the types of crime we were looking for. The Canadian Criminal Code identifies offences against a person (including homicide, murder, manslaughter, bodily harm, (aggravated) assault, child neglect and kidnapping) and sexual offences (including sexual interference, sexual exploitation and incest). Often these can be prosecuted as indictable offences requiring imprisonment exceeding 18 months. In the Belgian Criminal Code, we find violent crime ranked under offences against the person, such as assault, (attempted) murder, manslaughter, child neglect, stalking; offences against the sexual moral, such as rape and incest; and offences against property, including robbery. In the Belgian Criminal Code, there is a distinction between such crimes that are punishable with a prison sentence not exceeding five years, which is decided at the correctional court ('*wanbedrijf*'), and those punishable with a prison sentence of at least five years, which is decided at the *Cour d'Asisses* ('*misdaad*'). In a few cases, the recruiters of respondents applied some discretion for the selection of victims for our research sample and diverted from the selection criterion regarding the type of crime (see 3.3.).

We want to note that we did not include victims under 18 in our research project due to research-ethic rules developed and controlled by the University of Montreal. We also limited our population to victims whose restorative intervention had been concluded to ensure that our respondents could comment on the full experience with regard to the restorative approach as well as on its outcome (as both procedure and outcome assessment are considered within the procedural justice framework).

Furthermore, we limited our population to those victims that participated in a VOM, FGC or VOE in order to limit the variety of types of restorative interventions in our sample. VOM is the most commonly used restorative practice worldwide (see 1.1.1.2.). FGC is quite popular when working with juvenile offenders, and together with VOM it is inscribed in the Belgian youth law of 2006 and in the Canadian 2002 Youth Criminal Justice Act (see

2.2.1.1. and 2.2.2.1.). VOE has been included because it is offered by two established organizations in Québec, our home base, for violent crime and sexual aggression. But even more importantly, VOE can be a viable alternative for victims who do not wish or cannot meet their own offender (for instance because their own offender has never been denounced, apprehended or prosecuted, because they are too afraid to communicate with their own offender or because their offender refuses to communicate with them). When restricting the research population to victims of violent crime, who are generally more likely to be traumatized compared to property crime victims (see 1.1.2.2.), and therefore more likely to be afraid to meet their offender, it seems opportune to include programs that offer victims the opportunity to meet a surrogate offender.

Finally, our third empirical objective, to compare the evaluation of restorative practices before and after a judicial decision was taken, requires the involvement of two distinct groups of respondents, *i.e.* victims who participated in a restorative intervention before adjudication and victims who participated in a restorative intervention in a post-adjudication stage. Therefore, victims were recruited in Canada and Belgium. We repeat that our objective is not to compare the national contexts, restorative policies and practices as such. Rather, the comparison of the observations coming from these two groups allows for the impact of a judicial decision on the victim's assessment of the restorative measure to be controlled. We want to compare the victims' experiences with restorative interventions applied before or after adjudication. In other words, the "before adjudication" group accounts for Belgian respondents mainly (with the possible exception of Canadian VOE respondents or Canadian respondents having met their juvenile offender in VOM), while the "after adjudication" group includes both Belgian and Canadian respondents.

The inclusion of two distinct groups has certain methodological consequences, more particularly regarding sample requirements. A research sample serves to provide empirical observations that can be used to develop statements via analytico-theoretical generalization

about the population. While a quantitative research sample is assessed by its statistical representativeness, a qualitative sample needs to be theoretically pertinent. Two criteria are used to this end: (1) external and internal diversification as criteria for the construction of a sample, and (2) empirical and theoretical saturation used to evaluate the sample and its size. External diversification refers to the need to include different groups in a sample in order to compare different groups of a population. Internal diversification assures that the sample will allow the researcher to observe the differences within a homogeneous group, which requires empirical saturation. Empirical saturation refers to the point where interviews or observations cease to provide new information and implies that the data collection can be concluded. Theoretical saturation implies that data only need to be gathered for as long as they are pertinent for the development of a theoretical concept. External diversification needs to be limited because the more groups there are to compare, the least likely and feasible it is to reach empirical saturation within each group. However, it is important to strive for maximum internal diversification because it enhances empirical saturation of each group. Ultimately, saturation of the data permits the generalization of the observations to the population within a theoretical perspective, despite the fact that saturated qualitative samples are not necessarily representative for its population (Pires, 1997). Our sample can in this regard be viewed as consisting of two relatively homogeneous, multi-case groups, distinguished by the timing of the application of the restorative intervention, in which internal differentiation is assured by variables such as age, education, nationality, type of violent crime, civil status, connection to the offender prior to the victimization and type of restorative measure.

3.3. Recruitment of respondents

3.3.1. General course of the recruitment

Respondents were recruited with the assistance of restorative services in Canada and Belgium. We contacted five umbrella organizations in the field of the application of VOM or FGC, and two independent services working on VOE, and received positive responses to our request for cooperation. The umbrella organizations in question are the following: (1) the Restorative Justice Division within the Correctional Service of Canada that coordinates the nationwide Canadian Restorative Opportunities program; (2) the *Regroupement des Organismes de Justice Alternative du Québec*, a provincial forum representing the different organisations for alternative justice for juvenile offenders in Quebec[14]; (3) Suggnomé, the designated coordination service for VOM in Flanders; (4) Médiante, the designated coordination service for VOM in the French community of Belgium; and (5) the regional *OndersteuningsStructuur Bijzonder Jeugdzorg* (OSBJ) coordinating VOM and FGC for juvenile offenders in Flanders.[15] They agreed to pass our request for recruitment to their local mediators. This request was accompanied by the principal approval of the umbrella organization for participation in the project and recruitment of respondents. The decision to participate in the research project was left to the local mediators. A good number of local mediators accepted to assist in recruiting respondents by selecting and contacting some of their clients. Others refused for various reasons, mostly due to time constraints and services being overburdened.

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[14] The ROJAQ is a forum for the promotion of the development of alternative measures, including restorative interventions, rather than a service coordinating and overlooking the local practices.

[15] We decided not to contact the equivalent of the OSBJ in the French Community, *i.e.* Arpège, unless we did not reach enough respondents in Belgium, which was not the case.

We also contacted two services providing VOE in the province of Québec, namely the *Centre de Prévention et d'Intervention pour Victimes d'Agression Sexuelle* in Laval, Québec (CPIVAS) and the *Centre de Services en Justice Réparatrices* in Montreal (CSJR). They both agreed to contact some of their clients with our request for an interview.

The mediators who accepted to assist in the search for respondents were asked to select some of their clients, preferrably at random. Most mediators in Canada and some in Belgium, however, preferred to select victims more cautiously, *i.e.* to select among their clients those victims of whom they assumed were emotionally capable of recounting their experiences. This was done out of the concern not to expose old wounds or to overburden their former clients.

A central issue in the recuitment of respondents was respecting the selected victims' privacy. Instead of sending the selected clients' names and coordinates to us, we asked the local mediators to make the first contact with the selected clients and to pass them a written request for an interview (explaining the nature and purpose of the project) as well as a consent form for the interview (assuring anonimity and confidentiality), as required by the ethic's certificate assigned by the University of Montreal (see annex 4 and 5). Often the first contact between the mediator and the selected victim was done by phone, followed by the mediator sending the written forms and letters to the contacted client. Those clients that were willing could then contact us directly, or give permission to the mediator to refer their names and coordinates to us. We asked the mediator to contact the selected clients again by phone seven days after the invitation letter was sent if the selected client had not yet responded. The purpose of this phone call was not to urge potential respondents to participate. It rather served as a reminder of our request, as often a written request gets lost or because potential respondents simply forget to reply.

Only a few victims contacted us directly; the large majority of respondents allowed the mediators to send us their coordinates in order for us to be able to contact them. Upon these referrals, we never asked which type of crime exactly had affected these victims or what the concrete consequences had been. We chose not to in respect of the victims' privacy, as referred victims could still decide against meeting for an interview when we contacted them to make an appointment. Some mediators would, however, reveal some specifics regarding the crime and its consequences in the objective to inform us about certain sensitivities of their client and ask us to be cautious and sensitive.

We had mentioned in the consent form that we could refer respondents to a victim support service or back to the mediator they had already been working with, if we felt respondents were experiencing difficulties related to their victimization. Of course, a researcher has to be very careful not to be driven into the role of victim support worker. We made sure that the respondents were aware that we were not affiliated to the judicial system, the mediation service or victim support services.

In total 34 victims agreed to meet us for a one-time interview. The response rate to the invitation for an interview is unknown to us. We were only notified when contacted clients gave permission to the recruiting agent to send us their coordinates. We neglected to ask the mediators to inform us how many clients they had contacted and invited in total.

3.3.2. Some difficulties in the recruitment

Notwithstanding the invaluable assistance of the local mediators and umbrella organizations, we want to indicate certain structural difficulties encountered in achieving the sample. Some of these have been addressed by Lauritsen and Archakova (2008) in their review on issues in victimological studies. Research projects on victims of crime often deal

with a limited response ratio. This can be due to contacted victims having moved (sometimes because of the crime) and the services not having the correct coordinates, or to the victim services being understaffed and overburdened (Lauritsen & Archakova, 2008). We can add some more specific difficulties related to recruiting victims for research.

Firstly, we had to find a balance between respect for privacy for the clients and finding respondents. Of course, the need for confidentiality and trust between the mediators and their clients should never be breached, no matter to what purpose and no matter how tough this makes it to do research. The importance of confidentiality and privacy needs to be respected. For instance, in certain Canadian services the deontological code states that a client in principle cannot be contacted once a file is closed, unless there is ongoing contact between the mediator and the client or if prior to closing a file clients were asked whether they would mind being contacted in the future. Often participation in a restorative intervention offers an opportunity to find closure and shedding the victim-label. Mediators might, in other words, be reluctant to recontact victims after their intervention is finalized in order not to lead them back to the negative life episode caused by victimization.

Secondly, recruitment difficulties were related to the fact that the population of victims we were looking for was small. This accounts for practices with juvenile offenders in particular. As we have seen before, in the caseload of the Flemish mediation services for juvenile offenders, only 30% concerns crimes against a person. This proportion is possibly even smaller in Québec. Martire (2005), who was given access to the databases of all the *Organismes de Justice Alternative* (OJA's) from 2000 to 2003, found that only one OJA in the province actually received files concerning violent offences committed by a juvenile offender. Even if this proportion might have changed since 2003, a number of OJA's indeed notified us that they could not assist in the recruitment of respondents because they did not have any files that complied with our selection criteria (others because they did not have the time and staff to assist us). Also, the number of cases concerning violent crimes

committed by adult offenders that are dealt with in mediation is limited (see also 2.2.1.3. and 2.2.2.3.).

Thirdly, a particular concern that was raised by certain mediators is that they had already received similar requests for interviews with their clients from other reseachers or journalists. The fact that they only have a relatively small pool of clients to approach with such requests (specifically for those mediators that only feel comfortable contacting clients they feel will be up for an interview), implies that they find themselves contacting the same clients repeatedly for an interview. One Canadian mediator, for instance, explained that *all* his clients had only recently been interviewed by another researcher. The pond is small and mediators might be reluctant to reel in the same clients over and again. On the other hand, some respondents were used to talking to the press, to researchers or at conferences and were comfortable in that role and had exactly for that reason been contacted by the mediator for our interview. Nevertheless, the subject of restorative justice being applied in serious cases might have become popular and might have instigated a sense of research fatigue. Mediators might simply prefer not to contribute to the recuperation and labelling of their clients and prefer to leave them in peace. Nonetheless, the mediators we contacted offered their full support and their assistance was key.

3.4. Sample description

3.4.1. General information

We found 13 Canadian and 21 Belgian victims[16] ready to share their experiences. In our sample of 34 respondents the age ranges from 23 to 74. Half of the respondents are in their forties or fifties. The sample includes 25 women and nine men. Of the respondents 18 are married or have a common law partner; one was engaged and getting married a couple of days after the interview; one is a widow; eight are divorced and six were single. In terms of the educational level of the respondents: one had only finished primary school, 13 went to high school, four followed a higher professional training, ten went to college and five to university (two of which have a law degree).[17] The majority of the respondents, 26 out of 34, had participated in a VOM, of which the majority concerns face-to-face meetings with the offender. Only four of the 26 VOM respondents chose shuttle mediation. We also met two victims who witnessed about their experiences with an FGC and six with a VOE.

Twenty-two of our respondents were directly involved in the violence (direct victims of the crime). The sample includes 11 indirect victims. Ten of these 11 cases concern murder or manslaughter and the respondent was the parent, child, sibling, cousin or godparent of the deceased victim. One respondent's parents had been the victims of a home invasion who

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[16] We actually interviewed a 35th respondent in Belgium, but the crime of which this person had been the victim did not involve violence; as a matter of fact there was no contact whatsoever with the offender at the time of the crime (money was stolen from the victim's office when he was absent). Since we never asked the referring mediator to inform us about the specific details of the file referred, unless they spontaneously revealed elements, we never had an idea what the respondent would relate to us about. We decided not to include this 35th interview in our sample and analysis because the offence fell outside our selection criteria, not because the reflections of the respondent on mediation and on the criminal justice proceedings were uninteresting or useless.

[17] For one respondent the highest educational degree is unknown.

had not themselves wanted to meet with their offender. Furthermore, one case involved a collateral victim, meaning that the respondent is related to the offender and not to the direct murder victim.

Eleven cases concerned murder or manslaughter. The sample also includes one victim of arson. This victim feels the crime should have been judicially categorized as an attempted murder because the offender had thrown a molotov cocktail in her house at night fully knowing that she and her family were sleeping there. Furthermore, eight cases concern sexual aggression (seven of which can be qualified as incestuous). We also met eight victims of physical assault, committed either with or without the use of a weapon. One of the victims of physical assault learned during the face-to-face meeting with one of the two offenders that the other offender had actually tried to kill the victim. In another two cases the facts were limited to threat with a weapon (firearm in one case and a swiss army knife in the other). One case concerned stalking, one a home invasion, and one robbery. Finally, one case was related to fraud (the offender had entered the respondent's house under false pretences to con her and steal her money). This last case, selected in Belgium, does not strictly comply with our selection criterion of violent crime. We were not aware of the details of the crimes upon meeting the victims in question. Eventually, we decided not to eliminate this file from our sample. While its objective classification might not fit our selection criteria, the subjective impact of the facts was nonetheless important for the victim in question and there was direct contact with the offender at the time of the crime.[18]

Most of the respondents, namely 21 out of 34, knew the offender prior to the victimization. In those 21 cases, 12 victims were directly related to the offender. Of these 12 respondents,

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[18] In Belgium, through cooperation agreements between police and victim support services, police officers are encouraged to refer victims who had eye contact with the offender at the time of the offence to victim support services. In other words, in Belgium the fact that there is direct contact between victim and offender during the crime seems to be enough to qualify for professional assistance. Also, in the International Crime Victims Survey, for instance, we find a reference to 'contact crime', grouping robbery, sexual assault, assault and threat (Van Dijk, Van Kesteren & Smit, 2007).

two respondents are related to each other and have been affected by a murder committed by a relative. Also, seven of these 12 cases concern incest. Furthermore, in four out of 34 cases the victim and offender used to be friends. In another four cases, the offender was known through the victim's family or a friend. One respondent had been assaulted by a work colleague.

Eight cases in our sample of 34 involve a juvenile offender, of which five were still under 18 when they met the victim. In one of these eight juvenile crime cases, the offender and the victim were both under 18 at the moment of the offence but the victim only filed a complaint years later when both she and the offender had come of age (due to a lack of evidence no prosecution took place in this file). In another two of these eight cases, the offender as well as the victim were juvenile at the moment of the crime and the victims only contacted victim support services and talked about the events when they and the offenders were adults, but they never filed an official complaint. These last three specific cases concern sexual aggression and its victims participated in a VOE (see annexes 1 and 2 for an overview).

3.4.2. Pre- and post-adjudication comparison groups

Our sample balances respondents who participated in a restorative intervention before or after penal adjudication. The group of participants before adjudication includes 14 respondents. Only one of these is a Canadian respondent, who was the victim of sexual abuse and, as part of her therapy, took part in a VOE, before the prosecutor decided to prosecute. The decision to prosecute was still unknown to this victim at the moment of the interview.

The group of participants after adjudication also counts 14 respondents, six of which are Belgian and eight Canadian. For two of the eight Canadian respondents prosecution did not

take place due to a lack of evidence (both cases concern sexual aggression and the respondents participated in a VOE). Considering a decision not to prosecute is a judicial decision, these two Canadian respondents were classified in the 'after adjudication' group.

Six out of the 34 respondents cannot be ranked in either group and will, therefore, not be included in the observations regarding the objective to verify the impact of a judicial decision on the victims' assessment of restorative justice. In one case, concerning a Belgian respondent, the mediation procedure ran parallel to the trial: mediation was initiated and shuttle communication was ongoing before the trial but the actual face-to-face meeting between the victim and offender only took place after the trial. Two respondents could not remember when exactly the restorative intervention took place. One of these is a Canadian victim of a juvenile offender; the other respondent is a Belgian victim of an adult offender. In another two cases the respondents never filed a complaint against the offender (these are Canadian victims of incest, who participated in a VOE). One final case concerns a collateral victim in a murder case, of which the offender had died at the crime scene; no trial ever took place in this file. This respondent took part in a VOE.

The before and after adjudication participation groups, each including 14 respondents, compare quite well to each other. The average age in both groups is 47. Both groups count mostly women. However, while there is six men in the 'before' group, there is only one in the 'after' group. The 'before' group includes 11 VOM, two FGC and one VOE, and the 'after' group includes 12 VOM and two VOE. In each group, more than half of the respondents knew their offender prior to their victimization. There is two juvenile case in the 'after' group and there are three in the 'before' group. The two groups differ more with regard to the type of offences accounted for. There are more murder or manslaughter and incest cases in the 'after' group. Assault is the most common in the 'before' group. Finally, there are also more indirect victims in the 'after' group, which is related to the higher number of murder or manslaughter cases in this group (see annex 3 for an overview).

3.5. General course of the interviews

The majority of the interviews took place at the respondents' home. Others were done in an office space provided by the mediation service that had referred the respondent. A number of interviews were done by phone: one with a Belgian respondent who had cancelled the planned face-to-face interview in Belgium, which could subsequently not be rescheduled, as well as the interviews with the five respondents in British Columbia and Alberta. A face-to-face meeting between interviewer and respondent is without a doubt preferable, especially when addressing issues such as victimization and meeting one's offender. Unfortunately, we did not have the funds to travel to the Western Canadian provinces to meet the five respondents face-to-face. We did have the impression that the British Columbia and Alberta respondents were quite comfortable talking to us on the phone, even if the content of the conversation was often very emotional. These were also the respondents with the most experience in speaking about their victimization and their experience with restorative justice to the press, to researchers or at conferences.

The length of the interviews varied from half an hour to three and a half hours, with an average length of one and a half hours. All the face-to-face and phone interviews were recorded, with the permission of the respondent. As noted before, we also completed a respondent's identification card at the end of each interview. Immediately after each interview, we made a memo to retrieve the most important elements and observations from memory and notes taken during the interview. Each memo also contained preliminary theoretical reflections as well as methodological notes, giving us pointers for subsequent interviews. The actual interview verbatims were transcribed in a later stage.

There are no noteworthy problems with regard to the individual interviews. A couple of respondents did not remember all the details of the events, but this is a negligeable detail as they were still able to express their opinion and to describe what they liked or disliked

about the procedures they had followed. One phone interview was done while the respondent was in the car. This was far from ideal, but the respondent had forgotten about a meeting when making an appointment with us. She did not want to reschedule the interview again.

The respondents were keen to share their experiences and views on the judicial procedures and the restorative intervention. Their recounts resulted in rich data. They also shared quite some details about the crime and its consequences. This was often very emotional, which, admittedly, affected us as well. Other researchers collecting highly emotional witnesses have observed a similar personal impact, generally referred to as compassionate stress (McCann & Pearlman, 1990; Salston & Figley, 2003; Rager, 2005a, 2005b). We did not feel unnerved or destabilized but certainly emotionally touched by the respondents' story and by their openness, resilience and hospitality. Several victims were very much aware of their potentially destabilizing impact on people and *they* asked *us* at the end of the interview whether we were okay having listened to their recount of such a sad episode in their life.

A number of respondents mentioned to us or to the mediator afterwards that they were glad that they had had the opportunity to share their story. It felt good for them to talk about the events, their passage through the judicial system and their participation in VOM, FGC or VOE. Some respondents admitted to us that they had also accepted the interview hoping to learn more about restorative justice from us and to find out how other victims feel about mediation or restorative encounters. It was as if they wanted to know that they were not alone in having voluntarily met or communicated with their offender or a surrogate offender, something that was, for instance, still regarded as peculiar or downright bizarre by people in their entourage.

3.6. Some methodological reflections in hindsight

A first methodological afterthought we wish to briefly elaborate upon is that we used a fairly non-specific opening question, as we have already indicated (see 3.1.2.). The question did lead to the information and reflections we were after. The respondents spontaneously referred to and reflected on the restorative intervention as well as on the criminal justice proceedings. Most referred to the restorative intervention as a meeting or as a confrontation with the offender, rather than using the professional terminology. They took their time to describe how they had experienced the restorative practice. They had been selected and referred to us by the mediation service they had used, which might explain that they instinctively knew we wanted to hear about their experience with this service.

Furthermore, early on in our data collection process we noticed that the inclusion of the opportunity for the respondent to give a score to each of the procedures followed in the respondent's identification card, was quite helpful. It proved to be an interesting way to relaunch the respondents one last time on their experiences and to help them objectify these experiences, merely to complement the interview. Often it helped them reformulate how they had felt about the procedures and what they had liked or disliked.

All the victims in our sample are victims who initiated or accepted the invitation for a restorative intervention, because those are the respondents we needed in order to be able to respond to our research questions. They are also those who accepted our invitation for an interview. Some will argue that this poses a limitation to our sample and research instrument, *i.e.* having reached only those victims who are willing to and capable of reflecting on their experiences, who are more articulate and who might, therefore, possibly have the most pronounced opinions about the restorative practice. This could, for instance, result in a sample including victims who are very satisfied or very dissatisfied but not those who have more nuanced opinions. As we have indicated in the previous paragraph, a couple

of our respondents are victims that had already been involved in presentations or in research projects or documentaries and had for that reason been contacted by the mediator with our invitation. But the large majority of the respondents in our sample did not have any experience with interviews and research. In addition, certain respondents wanted to render service to the mediator by participating in the research project because they were very grateful for the help received by the mediator. This gratitude motivated them to agree with an interview. But then again, even if the self-selection bias for respondents (not to be confused with the self-selection bias for restorative justice) holds true, it would be a tolerable as well as inevitable hazard. One cannot force victims to participate in an interview and therefore one has to agree to the potential self-selection bias regarding the respondents reached. Also, since saturation and diversification, and not statistic representativeness, define the quality of the qualitative research sample, the above is an afterthought rather than a source for bias or concern.

With respect to the internal validity of the data and the data analysis, we do need to highlight that we were the sole researcher working on this data. There was, for instance, no inter-colleague comparison of analytical categories. We did, however, work closely with our Ph.D. supervisor on the establishment of the theoretical and analytical framework and the description of the research observations, which can be an indirect measure of result validity.

Finally, we are aware of the danger of putting the experiences of victims coming from two very distinct adjudicatory regimes and legal cultures side by side (see chapter 2). The experiences of Canadian and Belgian victims, regardless of the moment they participated in the restorative intervention, must be very different due to the specific criminal justice regime. However, our objective is to compare the experiences with the restorative practices, not with the judicial proceedings, no matter how different these may be in the adversarial and inquisitorial regime. We are aware of the different position and participatory rights of

victims in both adjudicatory regimes, but we did not set out to verify the role of these differences in the victims' experiences with the restorative approach.

Researcher bias is inherent in all research projects but often particularly apparent in qualitative research, as it depends highly on the loyalty of the researcher to the empirical data and his creativity in the analysis, subjecting them to the '*assauts de toute une série de mesures* im*parfaites* (Webb *et al*., 1965 as cited by Huberman & Miles, 1991, p.425; emphasis added)'. Other than that and the methodological observations just mentioned, we do not see any major concerns for bias, and regard our sample and the data collected to be valid.

In the following three chapters we present our data analysis with regard to three empirical research objectives:

• Verify the compliance of RJ with PJ	Chapter 4
• Describe the degree to which RJ potentially moves beyond PJ	Chapter 5
• Examine the appreciation of RJ relative to its timing within the judicial proceedings	Chapter 6

4. The restorative approach in compliance with procedural justice premises

In what follows, we will cover our observations regarding the compliance of restorative justice with procedural justice. We address findings regarding victims' satisfaction with the restorative interventions (4.1.), to subsequently describe how the restorative procedure is valued irrespective of the outcome (4.2.). We found that voice was a strong factor for victims' satisfaction with the restorative approach (4.3.), but also found indications for the importance of other procedural determinants, such as respect, trust and neutrality (4.4.). Victims indicated to have been looking for recognition, which was complied with in the restorative approach. This finding corresponds with the normative justice motive, central in the group-value approach to procedural justice (4.5.). We also observed the fair process effect (4.6.) and the importance of the quality of interactions with the mediator for victim satisfaction with the restorative offer (4.7.).

4.1. Victims' satisfaction with restorative interventions

The purpose of this dissertation is not to actually verify whether victims are satisfied with VOM, VOE and FGC, which has already been demonstrated in a vast body of evaluative research projects. Rather, we set out to investigate whether the procedural justice theory can be used to explain the observed favourable assessment of the restorative offer by victims of violence. This quest would have been somewhat difficult should we have noted that our respondents were *not* satisfied with the restorative offer they were involved in. That is, however, far from the case. All the respondents in our sample are satisfied with their participation in the restorative intervention, whether it was VOM, VOE or FGC.

Following their involvement in a restorative intervention, the respondents feel they have gained a better insight in what had happened exactly and why the offender had assaulted them. For those respondents related to the offender (N=12), the impact of having communicated with him on their future dealings could have also been important. Most of these respondents (N=9) were not looking to fully restore the relationship they had with the offender before the aggression, but were able to at least agree on how to act in the event of an unexpected meeting. Restorative interventions are also credited for having had a healing or therapeutic effect. Notwithstanding that other types of interventions, such as victim support, therapy or support from significant others, also contributed to their psychological well-being, the respondents clearly distinguish the healing impact of the restorative intervention from the healing impact from other services. Seven respondents highlight that the hard reality was that they found healing in meeting the person that hurt and harmed them or offenders who had committed similar crimes. It became almost ironic for them that the person that caused them or another victim so much pain set them free, sometimes by simply showing his remorse.

> (Irma) '*Je dis, la seule chose qui a été constructive pour moi depuis le meurtre, c'est d'avoir rencontré (l'auteur). Et pourtant c'est quelque chose de très, très difficile. C'est très dur. Il y a beaucoup, beaucoup d'émotions. Mais c'était la vérité.*'
>
> (Dana) '*And the bottom-line is, if (the offender) had never harmed me in any way, you know, I would have never gone into prison. It is kind of ironic considering I found a lot of hope and healing now volunteering in prison.*'

It is noteworthy to mention that the VOE-respondents (N=6; all but one are victims of sexual aggression) speak consistently in terms of healing and empowerment, more so than the VOM-respondents. That is not surprising given the fact that all but one of these respondents were referred to the VOE by their therapist and that the VOE was an integral part of their therapy. They recount that it allowed for them to reconnect with their emotions

and to take back control over their lives by way of having the offenders, albeit only surrogates, take over the responsibility for the aggression. In addition, one VOE respondent noticed that the presence of other victims of similar offences in the preparatory meetings (or at regular, unrelated victim meetings organised by the victim support service that coordinated the VOE) and at the actual victim-offender meetings, unique to the VOE, was helpful. She finally realized she was not abnormal in acting the way she always had (being different from other children, having trouble in school, dealing with anger issues and having struggled with addiction). Hence, not only the confrontation with the offenders was important, but also the confrontation with other victims and with one's own emotions had been key.

> (Ginny) '*Une première rencontre, aussi entre victimes, c'est pas toujours… . J'ai réalisé, moi en tous cas, que ça provoquait beaucoup de pudeur chez moi. (...) On se reconnaît dans les émotions des autres victimes. Tout à coup je me sentais moins confuse, moins folle, moins déviante. (...) J'avais le droit de me reconnaître comme avoir été une victime, ... juste ça*'.

Accordingly, respondents use very lyrical terms to describe the restorative intervention and the vital impact it had on their emotional recovery, such as appeasement, liberation, affirmation, recognition, feeling valued, validation, feeling reborn and finding closure. This experience is often in sharp contrast to experiences in the criminal justice system, to which 29 respondents have also (already) been exposed. The criminal justice system received a negative evaluation from many of them (N=13)[19], finding it to be burdensome and a source for frustration. Four respondents felt revictimized. While the judicial system relies heavily on the victim's witness to convict the offender, especially in the adversarial regime, feeling revictimized in the process and even needing victim support to be able to sit it out, did not

[19] Thirteen respondents gave the criminal justice system a positive evaluation; the remaining three respondents were undecided.

make a lot of sense. Consequently, they described their experiences in the criminal justice system as the worst part of their life, apart from the crime itself.

> Annette felt reborn and liberated following her participation in the VOE program. She describes herself as a debutant in life, able to start over and finally enjoying life to the full. '*Je suis débutante dans tout. (…) Comme la chenille qui est devenue papillon.*' She speaks of appeasement, deliverance and renaissance as a result of the VOE.
>
> Catherine describes the criminal justice system as excruciating, frustrating, ridiculous, all bureaucracy and no humanity. Apart from the aggression, going through a criminal trial was the worst experience in her life. She still has nightmares of the cross-examination in court. She felt attacked by the defence lawyer, who manipulated the truth in favour of the offender. All this led her to feel victimized again. '*It was the worst experience of my life other than the fact of the actual experience itself. (…) I felt humiliated and embarrassed because people were hearing me describe the things that he had done to me, that was embarrassing. It was very, very, very hard to talk about. (…) I still relive the court in my sleep; I still have nightmares of the court in my sleep. (…) (The criminal justice system) just didn't work for me*'. But when she talks about VOM, she uses words like gratifying and appeasing. VOM had been very meaningful to her. Thanks to the face-to-face with her aggressor in prison, she was able to forgive and move on. '*I still look back on it … *wow*, it was just one of those moments in life were you just go *wow*. You just can't believe that that actually happened as well as it did. (…) It was just the most gratifying thing that could have happened to me. I think that was my peace-giving moment, I was able to come to peace with everything at that point. I don't believe there is any such thing as closure, but (mediation) came as close to closure for me as possible. It was the peace that I needed*.'

We do no want to overestimate the need for healing, however. Not every victim was looking for healing *per sé*. Some were fortunate enough to have been able to deal with the consequences on their own or with the support of their relatives and friends (N=6); others indicate that they had not really suffered emotionally as a consequence of the victimization (N=4). Therefore, not all of the respondents had healing needs to be responded to in the

restorative approach. Our respondents revealed a multitude of needs, unrelated to emotional needs, which were responded to in the restorative approach (see also 5.1.2.).

> (Quinten) '*I was badly hurt. It's a miracle that I'm still alive. Because all the doctors said I should have died, actually. (...) Luckily, psychologically I'm strong enough to have been able to process it all, I have no ... . (...) I amazed myself at how strong I was. Because, if you go through something like (such violence), it reinforces your own self, actually. It empowers you. (...) Well, I'm glad I've been able to share it again. That is one of my strengths, I think, that I can talk about it*'.
>
> (Translated by the author from Dutch: '*Ik was zwaar gekwetst. Het is een wonder dat ik nog leef. Want alle dokters zeggen dat ik eigenlijk had moeten dood zijn. (...) Nu, gelukkig, ik ben psychisch sterk genoeg om dat te verwerken, ik heb daar dus niks... . (...) Ik heb voor mijzelf verstomd gestaan dat ik zo sterk was. Want als ge (zo'n aanval) meemaakt, dat versterkt uw eigen ik, eigenlijk. Dat versterkt u. (...) Allé vooruit! Ik heb het nog eens kunnen vertellen. Dat is een van mijn sterktes, denk ik, dat ik het kan vertellen*.')

In one particular case, the respondent liked the VOM mainly because it was practical. She was content that the affair could be settled through shuttle mediation, because it saved her the trouble from having to find a ride to go to court. She simply liked the fact that she did not have to travel to court and that the mediator came to her house and passed along the messages between her and the offender until an agreement was reached. She had no other expectations or requests but for the situation to be resolved as fast and informal as possible.

Only three of our respondents had heard about the restorative intervention before they were referred or invited to it. The others were unaware of the restorative options or of the meaning of restorative justice before their participation. Three respondents have already repeated the restorative procedure with their offender or with a new group of surrogate offenders, not because of new victimization but because new questions arose following the first meeting. Three others have requested a new meeting for similar reasons. Due to the favourable impact on their lives, 21 respondents find the restorative approach to be recommendable for other victims. They note that although it may not be suitable for

everyone, victims should be informed nonetheless about their restorative options, as long as they have the opportunity to refuse to participate.

Six respondents mention that they have become ardent supporters for the restorative approach and are engaged in a restorative service as a volunteer, speak at public meetings about their experiences in restorative justice or actually refer other victims to the restorative services.

> (Yann, who is a lawyer) '*C'est pour ça que maintenant j'envoie (…) toujours mes dossiers (s'il représente la victime), où c'est susceptible d'être utile, en médiation réparatrice, d'office. Parce que je trouve que c'est vraiment utile au niveau personnel. Ça permet un soulagement énorme.*'

Moving beyond the observation of satisfaction of our respondents and of the healing effect of restorative interventions, we return to the first core objective of this dissertation, *i.e.* to verify whether the procedural justice arguments can be used to shed light on the observed victim satisfaction with the restorative approach.

4.2. Restorative procedure valued irrespective of its outcome

While the accent in the procedural justice theory is evidently placed on the procedure and its characteristics, the importance of the fairness of the outcome is in no way disavowed. For the majority of the respondents the outcome of the restorative intervention was quite satisfactory. We also found that, in line with the procedural justice theory, the restorative procedure seems to be valued irrespective of its outcome.

4.2.1. Restorative outcomes in violent crime cases

In the framework of VOM and FGC an agreement between the victim and offender can be edited and signed, and even added to the judicial file. In the framework of the two FGC's in our sample, the young offenders had designed an intention plan (including the intention to follow an aggression replacement training and compensation). In sixteen of the 26 VOM-cases an agreement was written and signed by the victim and the offender. In six of these the agreement included financial compensation. In our selection of cases of violence against a person this concerned, for instance, compensation for medical costs directly related to the aggression (costs for physical examinations and continuous medical care) as well as for psychological treatment. There is only one exception. One of the six respondents, who signed an agreement with the offender that included financial compensation, participated to VOM to have the offender comply with the compensation order to which he had been sentenced in addition to imprisonment. She insists that she would not be happy with the money as such; she'd rather even burn it than use it. All she wanted was to strike the offender where it would hurt him the most. Moreover, in four of the six cases in which an agreement including financial compensation was signed, the victim accepted compensation on the offender's request.

While six of the 26 VOM-agreements include financial compensation, ten VOM-agreements only concerned a statement added to the judicial file, briefly describing the mediation procedure and the victim's concerns. Moreover, only in two cases the sole purpose for the victim to partake in the restorative intervention was a financial one. In one of these cases, the mediation procedure was set up to work out a financial agreement but failed. In other words, the majority of the respondents who wanted to work towards an agreement with the offender did not address financial issues in the framework of the mediation. Two respondents argued that only a judge could fairly decide on the extent of

the compensation. Financial issues, if there were any, were then addressed in the civil claim in court or in claims to the insurance company, rather than in VOM.

Hence, some material issues were at stake, but not to the extent that it drives the motivation for participation in VOM. This is in itself not entirely unexpected, since the primary damages of the violence were emotional (*e.g.* sadness for the loss of a significant other, stress, fear and other emotional issues) and, therefore, not quantifiable. For two respondents, the idea of getting compensated for the loss and pain they suffered seemed offensive. That is the reason why one of both victims refused the money the offender wanted to offer her and asked him to donate it to a non-profit organization instead.

For those that registered as a civil party in the inquisitorial regime, only 13 out of the 21 Belgian respondents[20], the reason to register was not necessarily (only) financial either, but to assure their presence or the representation of the deceased victim in the courtroom.

> (Eve, whose child was killed) '*One cannot compare a child to money. A child is priceless. (…) Say we would have bought a car with that money. Each time we would get in, we would remember we paid it with money for (our child). It would only gnaw away on your conscience*'.
>
> (Translated by the author from Dutch: '*Een kind vergelijk je niet met geld. Dat is onbetaalbaar. (…) Als we er een auto van gekocht hadden, en we kruipen erin, denken we elke keer dat dat van het geld van (ons kind) komt. Dan begint uw geweten ook nog eens te knagen, hé*')

> (Vanessa, who was the victim of arson and literally lost everything she owned) '*How do I estimate the damage? I no longer have a roof over my head. (…) I lost everything. (…) I lost pictures of my family, pictures of my (parent) who had died. (…) These were memories, which are worth more to me than anything, except for my kids of course. But all these pictures are gone! Try and put a price on that, that is impossible*'.

[20] Others registered as the injured party, presented a moral witness in court, merely attended the trial or choose not be involved in the penal proceedings.

> (Translated by the author from Dutch: '*Wat gaat ge van schade opmaken? Ik heb geen (dak) meer boven mijn kop. (...) Ik heb niks meer. (...) Daar zitten foto's in van mijn familie, foto's van mijn (ouder) die dood is. (...) Dat is een herinnering die mij meer waard waren als andere dingen, behalve mijn kinderen natuurlijk. Maar die (foto's) zijn weg! Plakt daar eens een sticker (prijs) op, dat kunt ge niet*'.)

Whether or not an agreement was sought after, and whether or not this agreement included a financial outcome, the respondents were first and foremost looking for apologies, answers to their questions (the most important being 'why?', 'why me?'), the truth[21], the offender's expression of remorse, and an opportunity to express their feelings towards the offender, to tell the offender how his acts had impacted them, and to urge the offender never to hurt anyone again (with the exception of the aforementioned two cases in which the sole purpose for mediation was of a financial nature). Such motivations for communication with the offender already reveal the significance of relational (versus instrumental) means attributed to participation in restorative interventions (see also 4.5.4.). It also indicates that the anticipated or actual outcome is rather abstract and immeasurable.

> (Irma, whose child was killed) '*Je ne veux pas non plus qu'il souffre (...), loin de là. Mais (...) ce que je lui ai dit, "je veux bien que tous les jours, pendant 5 minutes, tu penses à (mon enfant)"*.'
>
> (Vanessa) '*I told them, I had 1001 questions. But the most important question is still "why?". (...)"I know what happened to me, but I don't know the reason why"*'.
>
> (Translated by the author from Dutch: '*Dat heb ik hen ook gezegd, ik heb 1001 vragen. Maar de eerste is voor mij nog altijd "waarom ?". (...)"Ik weet wat mij gebeurd is, maar ik weet niet de reden waarom"*')
>
> (Xander) '*I wanted to give him a chance to apologize. I think that in itself is fundamental in our society*'.
>
> (Translated by the author from Dutch: '*Ik wil die een kans geven om zich te excuseren. Ik vind dat op zich iets heel fundamenteel in onze maatschappij*')

[21] Note the similarity with the general objective of the Truth and Reconciliation Commission: record the truth in order to allow healing.

> (Fiona) '*I felt at first that his answers were going to be so important, but I realized, after 15 minutes, they really didn't matter to me. He just really needed to know (our) story.*'

In conclusion, the nature of the restorative outcome is versatile and only in a few instances the outcome in the cases we studied was of a material nature. Moreover, not all respondents were looking for a written agreement. In sixteen cases an agreement was signed, but only in two of the remaining VOM cases the lack of a signed agreement was considered unfavourable. As a result, the nature of the requests towards the offenders was rather private or informal and, therefore, much less tangible.

4.2.2. Observation of the '*cushion of support*' construct

Most respondents (N=25) found both the procedure and the outcome of the restorative intervention to be satisfactory (+P and +O), irrespective of the nature of the outcome, whether it was a signed agreement between victim and offender or getting all the answers needed, getting the offender to recognize the consequences and responsibility or getting an apology. In these cases, it is hard to distinguish the independent effect of procedure and outcome on the overall satisfaction. The abstraction between the fairness of the procedure and of the outcome is easier to discern when one of both is found to be less favourable.

The independent impact of procedural fairness is palpable in those instances in which respondents found the outcome to be dissatisfactory, while the procedure was found to be satisfactory (+P but –O). These cases illustrate the '*cushion of support*' construct, predicting that the effect of an unfavourable outcome on the overall perception of fairness is moderated if this outcome is the result of what is perceived as a fair procedure. In a minority of cases in our sample (N=9), the outcome was perceived as unfavourable or less favourable, while the procedure was found to be overall satisfactory. This was, for instance,

the case when the offender could not agree with the compensation the victim was looking for or did not sign the agreement reached (N=3). The respondents' expectations with regard to the outcome of the restorative intervention were often more abstract and intangible than a VOM agreement. Victims were looking for answers or have the offender acknowledge the truth, validate them as a victim and accept responsibility. When they did not get these answers or when they were confronted with an offender who denies responsibility, the outcome qualifies as unfavourable (N=6). This led the victim into an imbalanced power struggle due to these conflicting interests. It became the offender's words against theirs, limiting the chances for a successful meeting, as has been recognized by Thibaut and Walker (1978) with regard to the changes for a successful bilateral conflict resolution.

> (Jeanne) '*But if we asked him "why?", he avoided the question. (...) All he says is lies. He keeps on lying. But what can you do?*'.
>
> (Translated by the author from Dutch: '*Maar als we dan vroegen "waarom?", dan was het (...) rond de pot (draaien) hé. (...) Het zijn allemaal leugens wat hij vertelt. Hij blijft liegen. Maar wat kunt ge doen?*')

> (Christa, reflecting on the VOE) '*Ils ont beaucoup exprimé (...) que c'était pas de leur faute, qu'ils avaient "ça". C'était la société qui a amené à ça ou "c'est génétique". Il y a des lois dans la vie et si on les dépasse, il y a des conséquences et il faut les vivre, arrêtez de vouloir mettre la responsabilité sur d'autres gens.*'

However, none of the victims in these nine cases were dissatisfied with their participation in VOM, FGC or VOE and still found satisfaction in the restorative procedure. Therefore, these cases point to the possibility of a restorative procedure forming a cushion for an unfavourable outcome resulting in a positive overall assessment of the restorative intervention. For instance, in two of these cases, although the respondents were disappointment for not having received the answers to all their questions (referring to discontent with the outcome), they were satisfied with the opportunity to express themselves (referring to procedural fairness).

Nonetheless, two of the nine respondents who reported an unfavourable outcome but were overall satisfied, make some comments with regard to the mediation procedure and its execution. They did not reject the restorative procedure entirely, however. According to one of these two respondents, the issues he had with the intervention concern not so much accusations at the address of the mediator, but indicate room for improvement and the need for attention for details in the execution of the procedure. He speaks in terms of a downside in the procedure ('*een minpuntje*' in Dutch, which translates in '*un bémol*' in French). For the second respondent, the issue she had with the procedure was related to the lack of recognition from one of the mediators. Both were satisfied with the other procedural characteristics of the intervention.

> Larry did not appreciate the fact that his aggressor had brought his spouse to the face-to-face meeting and does not understand why the mediator did not intervene and ask the offender's spouse to wait outside. '*Actually, that was the only hiccup in the mediation. (...) I would have expected the mediation service to tell them that it was between (the offender) and me alone, in the company of the mediator. (The offender's spouse) spent the entire time crying, crying, crying. That didn't make it easy for me to have our conversation*'.
>
> (Translated by the author from Dutch: '*Dat was eigenlijk het enige minpuntje aan de bemiddeling (...). Ik had wel verwacht van de bemiddelingsdienst daar, dat ze dan ergens zouden gezegd hebben, voilà, kijk, het gaat onder jullie, met een bemiddelaar bij. Die zat daar gans de tijd aan het wenen, aan het wenen, aan het wenen. Dat was zeker voor mij geen gemakkelijke positie om daar dan nog ne keer zo'n gesprek aan te gaan*'.)
>
> In Winona's case the frustration is related to the behaviour of one of the mediation service's staff present at the face-to-face meeting only, not in the preparation for the face-to-face meeting. She felt judged by him, as if he did not believe the allegations against the offender. He gave the impression that he believed the offender to be the victim of the incident. Her contacts with the actual mediator in preparation of the face-to-face went well though: '*Quand j'y ai été seule, c'était un bon 8 (sur 10). Quand on s'est retrouvé avec (l'auteur), j'ai l'impression qu'un jugement a été fait, (...) je mettrais un 6 (sur 10) (...). J'ai vraiment vécu ce moment comme ça. (Comme l'auteur était considéré comme) victime et moi agresseur.*'

We did not find any examples in our sample of a favourable outcome resulting from an entirely unfavourable procedure (-P but +O), which could be used to further illustrate the independent evaluation of procedural and outcome fairness, or of an entirely unfavourable procedure leading to an unfavourable outcome (-P and –O).

Table 3. Distribution in the favourable/unfavourable procedure and outcome grid

	Favourable outcome	**Unfavourable outcome**
Favourable procedure	25	9* (cushion of support)
Unfavourable procedure	None	None

* This group of 9 respondents includes 2 who made remarks with regard to the execution of the procedure and 7 who noted the offender's disrespect and did not trust the offender

In sum, when respondents expressed discontent, it was generally related to the unfavourability of the outcome, not of the procedure in its entirety. Furthermore, every respondent was satisfied with his participation. Therefore, the effect of the discontent with the outcome, which was only mentioned by a minority of the respondents, might have been moderated by the favourability of the procedure. Consequently, the '*cushion of support*' construct seems to find support in the assessment of restorative interventions. This confirms what evaluative research on restorative instruments has already found. Aertsen and Peters (1998) observed that even when no agreement could be reached between victim and offender during mediation, qualifying as a less favourable outcome, victims were still satisfied with the mediation. Wright (1996) also described the mediation procedure as an end in itself, rather than a means to an end, an observation that corresponds with our data.

4.2.3. Unfavourable outcomes attributed uniquely to the offender

In those cases in which the outcome is perceived as unfavourable, the outcome is attributed exclusively to offender, not to the mediator or the mediation procedure. Seven out of the nine respondents who reported disappointment in the outcome (because they were looking for the offender to accept responsibility or provide them with answers, which did not happen) (see 4.2.2.), also reported disrespectful behaviour by the offender and not having trusted the offender. They ascribe the unfavourable outcome to the negative attitude of the offender, the failure of the offender to engage himself in the procedure or the offender obviously using the intervention to his own advantage, *e.g.* to get a lenient sentence. According to the respondents in question, the mediators were not to blame for this. They did what they could and the respondents see no reason to be dissatisfied with the mediators. They argue that the mediators cannot force offenders to be sincere and engage themselves. The offenders failed, not the mediation as such. The offenders chose not to grab the opportunity to work out the conflict and its consequences with the victim and are, therefore, the only ones responsible for an unfavourable outcome. In other words, the mediator's and the offender's role are assessed independently and the mediator's approach and treatment might have cushioned the impact of the negative attitude of the offender in the intervention.

> (Jeanne) '*He keeps lying and thinks (the mediation) is a game. (…) (The mediator) can't do anything to change this. (…) You cannot force the offender. (…) I cannot blame (the mediator), he has not been neglectful. No! He did what he could (…). The only one to blame is (the offender) because he did not keep his word. There is not one thing I can name in which (the mediator) has been neglectful. (…) It's (the offender)'s fault. Actually, it's not the mediation that failed, it's (the offender)*'.
>
> (Translated by the author from Dutch: '*Hij blijft liegen en maakt er (van de bemiddeling) een spelletje van. (…) (De bemiddelaar) kon daar niks aan doen. (...) En ge kunt hem (de dader) ook niet dwingen. (...) Ik kan (de bemiddelaar) niks (...)verwijten, van '(de bemiddelaar is) nalatig geweest bij dit of bij dat. Nee! Die mens heeft echt zijn best gedaan (...). De schuld moeten we nu echt bij (de dader) gaan zoeken omdat die zich nooit aan zijn*

> *woord houdt. Ik kan niet één puntje opnoemen waar (de bemiddelaar) eigenlijk nalatig in geweest is of zo. (...) Het is de (de dader) zijn schuld. (...) De bemiddeling heeft eigenlijk niet gefaald, het is de (dader)*'.)
>
> (Xander) '*I do not regret having done the mediation. The (offender) was not open to it. That's his choice, right. I gave him a chance. (…) And (the mediators) told me that he was not open to it. (…) They were good, nice people, who took their job very seriously*'.
>
> (Translated by the author from Dutch: '*Ik heb geen spijt van die bemiddeling. (...) Die (...) heeft zichzelf daar niet voor open gesteld. Is zijn keuze hé. Ik heb hem de kans gegeven vind ik. (...) En (de bemiddelaars) hadden dan ook gezegd dat die wel veel minder openstond en ook veel minder eigenlijk zijn verantwoordelijkheid wil opnemen. (...) Dat waren heel goede, toffe mensen die hun job ook heel erg serieus nemen*'.)
>
> (Alma) '*La première fois c'était bien passé. Mais la deuxième fois (l'auteur) était froid. (…) Il avait montré aucune émotion, comparé avec la première fois. (…) J'ai été déçue à la deuxième rencontre. (…) Mais c'est pas la faute (du médiateur).*'

Pruitt and colleagues (1993) made a very similar observation, *i.e.* that outcome-success in VOM was related to the offender and VOM itself was judged on the basis of the procedural fairness offered by the mediator and the program. The lack of engagement of the offender can be interpreted as a lack of respect, which is a procedural justice determinant. The observation that an unfavourable outcome is attributed to the offender exclusively is an indication that the mediation procedure and the role of the mediator are evaluated independently. The procedural fairness is linked to program factors and the treatment by the mediator, while the outcome satisfaction is uniquely related to the offender's efforts, attitude and sincerity. This observation also complies with Tyler's (1994) finding that both in procedural and outcome fairness relational or normative factors are at stake.

4.3. Process control or voice as the primary procedural justice determinant

In the procedural justice framework process control or voice (used alternately) is defined as the opportunity to be involved, the chance to express one's concerns and be heard. It is the most reliable and stable finding in the procedural justice research and, hence, a strong indicator for which procedures are perceived as fair (Van den Bos, 1996). It is also the strongest indicator for satisfaction in our data. It is more consistently complied with in restorative interventions than in judicial proceedings.

4.3.1. Lack of involvement in the criminal justice proceedings

Research on the consequences of crime and recovery from trauma consistently reveals the victim's loss of control and the need to regain control (Herman, 1997). One way to do so is to engage the criminal justice system by formally disclosing the offence (Wemmers, 2008). In most cases in our sample the victim did not need to disclose the facts to the police themselves, as often ambulances or police had to be called to the scene by the victim, relatives or bystanders. However, in most sexual assault cases (N=6) as well as in some of the physical assault cases (N=3) disclosure required the victim to step out and inform the police. These types of offences tend to be the least reported to the police (Van Dijk, Van Kesteren & Smit, 2007). In six cases concerning sexual abuse in our sample, disclosure to the police was done only years after the events occurred, when the victim finally mustered up the courage to file a complaint. In one of these cases, the victim went to the police to tell her story and to ask for advice and information about support but did not file a complaint. For these sexual abuse victims, the fact that they reported the crime to the police (or merely informed them about it) was in itself a way to take back the control that the offender took

away, to show him that he did not scare them anymore, and is, therefore, instrumental in their empowerment. According to Khouzam, Marchand and Guay (2007) disclosure is also a way to mobilize social support.

> (Annette) '*Qu'il y a rien (par la suite, comme poursuite ou sentence), ça ne me dérange pas, mais qu'il sache que je l'ai dénoncé. (…) Même s'il y a pas de poursuite, j'ai déjà dit mon truc que "je n'ai pas peur de toi"*.'
>
> (Christa) '*Juste ça, de briser la silence, ça m'a aidé, comme si je me suis faite renaître. (…) Comme si je me donnais la permission, pour une fois, d'être un être humain à part entier.*'

Disclosure is a request for a third party to get involved in looking for a solution for the crime. This does, however, not imply that the victim wants to delegate all the control to the criminal justice system and its officials. Regaining control, even though a third party has been called upon, also implies the need to be involved to some extent in the procedures undertaken in the criminal justice system. However, filing a complaint is often the only form of control the victim has in the criminal justice system, reducing the victim to gatekeeper.

After the offence is disclosed to the police, a police investigation is conducted, after which the file is transferred to the prosecutor. The prosecutor is then in control because he will decide whether or not the complaint is valid and pertinent enough to be brought before a judge. The respondents were not involved in this decision (see also for instance Hickman & Simpson, 2003; Davis *et al.*, 2008) or even informed about the state of the proceedings. Eleven respondents remark that, while they waited for the decision to prosecute and to go to trial, the uncertainty about what would happen next was distressing. Lack of information implies lack of insight, for instance in whether the case is being taken seriously.

> (Danielle) '*J'ai eu un appel d'un enquêteur que ça pourrait être long. C'est sûr qu'il y a des cas plus urgents, je comprends ça aussi. (…) (Mais) c'est très stressante, l'attente! (...) (Finalement) le procureur me téléphone pour me dire "finalement il y a rien à faire". Et ça après trois ans. Ils m'(avaient) donné de l'espoir.*'
>
> (Zara, whose parent was killed) '*It took them three years (to start the trial). (...) That was terribly long. (...) I had the feeling that I had been carrying my (parent) on my back during those three years. The trial started on a Monday, and when I got up on Friday, I said "today is the day I'm going to be able to bury my (parent)". (...) They should not allow that, it should not take so long. Because it is only afterwards (after the trial) that you can mourn*'.
>
> (Translated by the author from Dutch: '*Dat heeft eigenlijk drie jaar geduurd. Dat was verschrikkelijk lang. (...) Ik heb toch het gevoel gehad drie jaar aan een stuk dat mijn (ouder) op mijne rug hangt. (...) Maandag is die zaak begonnen, en vrijdag sta ik op, en ik zeg 'vandaag begraaf ik mijn (ouder)'. (...) Dat zouden ze niet mogen doen, dat daar zo een lange tijd tussen zit. Want eigenlijk kunt ge pas nadien maar rouwen*'.)
>
> (Alma) '*Avant les procédures ça fait dur. Ça t'appelle pas, ça te prévient pas. Ça te laisse aller de même dans la nature. (…) Qu'ils nous appellent pour nous informer qu'est-ce qui peut arriver, qu'est-ce qui peut se passer. Pas attendre six mois*'.

The subsequent judicial proceedings received an overall negative evaluation from thirteen of the 29 respondents who had already been involved in the criminal justice system.[22] Eight respondents experienced it as disempowering. It was the general lack of control in the criminal justice proceedings, again due to the lack of information and of insight in the proceedings, strengthened by unexpected postponements (called defence stall tactics by three respondents), considered as a source of frustration. This is especially prevalent in the adversarial regime, where the victim does not have a formal status, other than as a witness. A particular issue in the adversarial regime is the victim being subpoenaed at the trial to

[22] Of the five remaining respondents one respondent was still waiting for the prosecutor to decide whether or not to prosecute and her contacts had been limited to the police; two had never filed a complaint; one choose not to be involved and did not attend the trial and she initiated VOM when the offender was in prison; in one case, prosecution never took place because the offender had died at the crime scene.

witness. The subpoenaed victims (N=3) had no choice but to be involved, which one respondent in particular complied with against her will.[23]

> (Dana) '*Part of your question is "the procedures that you choose to follow". And actually getting to choose to follow procedures isn't something that I experienced until I met (the mediator). Before that none of it was a choice. (...) I ended up getting pulled into the whole gamut. (...) I was subpoenaed and called a witness to a criminal trial. (...) I was very afraid that if I testified or was part of it, that (the offender) would come after me and would kill me. So it's nothing that I would have chosen at that time. (...) (Finally, the charges were dropped on a technicality.) So you can see, after going through all that, (...) I was very shocked and very surprised and angry at the time and felt very victimized.*'

But also in the inquisitorial regime, despite the formal possibility and choice for involvement as a civil party or injured party, able to request to read the judicial file or to request certain investigatory steps, eight respondents subjected to this regime were equally frustrated with the lack of communication from the prosecutor, the uncertainty about the state of the file, referring to a lack of control, as well as for instance the bureaucratic approach or the treatment they received.

Furthermore, respondents could not express themselves freely. Although order in the court is needed, this should not imply that victims should not have a chance to voice their concerns. The respondents appreciated the opportunity to present a victim impact statement in court or at the parole board (twelve of our respondents already made use of this opportunity), but it did not allow them to address the offender directly. This was in itself not always enough to disapprove of the criminal justice system as a whole, but it surely was cause for frustration. In addition, four respondents judged that there was not enough room for emotions in the courtroom.

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[23] The opposite might equally be true, but we have no cases in our sample in which victims wanted to testify but were not called as witnesses.

> (Irma) '*C'était son avocat qui parlait pour lui. Jamais j'ai pu lui parler. (...) Il faut le dialogue*. (…) *C'est dans la routine pour eux, c'est la routine, moi c'est pas la routine. Moi c'est beaucoup d'émotions (...). On est avec les gens qui font leur métier, et puis, vous êtes la victime. En tant que victime, vous êtes toujours toute seule. (...) Donc, vous, vous êtes là avec vos mots, vous cherchez vos mots, vous avez votre pudeur, vous avez votre souffrance, et vous devez parler avec des gens qui sont administratifs, en gros. Il y a un grand écart entre ces deux mondes différents.*'

Fortunately, while for thirteen respondents the experiences in the criminal justice system were frustrating and cause for stress and therefore, negatively evaluated, for an equal number of respondents the experience in the criminal justice system, either inquisitorial or adversarial, was not all that negative. Eight respondents highlighted that they had a good contact with the prosecutor. Five of these eight found the proceedings to be quite the ordeal and distressing (because of the lack of control and voice and because of the high formality of the proceedings, which seemed to depersonalize their case). Nevertheless, the support of the judicial actors helped them through all this. Eleven respondents note that they are very appreciative of the support offered by victim services at the court as well. This observation indicates that procedural rights alone will not remedy the issues victims encounter in the criminal justice system; respectful interaction with judicial actors is equally important (see also 4.7.).

4.3.2. Process control in the restorative approach

Whereas several victims in our sample felt stripped of control in the criminal justice proceedings, in the restorative interventions victims felt they were allowed to control their participation, the execution of the procedure as well as the topics being discussed during the actual meetings with their offender or surrogate offenders. They felt more involved and sensed that they had profited from the opportunity to express their concerns.

First of all, the victims we met did not feel pressured to participate in the restorative intervention, in line with what Umbreit and colleagues found in their study (Umbreit, Coates & Vos, 2002). The voluntary nature of participation is one of the fundaments of restorative justice and appears to be appreciated. After having been informed about the objectives and general course of the intervention, the respondents had the opportunity to accept or refuse the invitation to partake, a factor for satisfaction in itself. Three respondents, who initially refused the offer, appreciated the possibility to revise their initial refusal when they felt ready or when the idea of meeting the offender seemed more opportune, for two of these three respondents only years after the initial invitation to the restorative intervention.

> (Erin) '*(The mediators) asked me like "why would you want to go?", "I don't know!" (...) "Well, that's understandable". (...) And then towards (the end) (I told them) "okay, set it up". (...) The naked truth was, you know, (the mediator) didn't want to push*'.
>
> (Christa) '*C'est moi, c'est ma vie, je décide ce que je vais faire*'.
>
> (Fiona) '*After I registered with the National Parole Board, after (the offender) had filed the appeal, I guess I have ticked a box at the back of the form (...). And there was a little box that said, "would you be interested…", or something about being contacted by a restorative justice (service). There is a little question for that. (...) I really don't remember ticking it. (...) I really didn't know what the (mediation) program was (...). (My husband) and I met with (the mediators) (before the first parole hearing). And we both went "oh no, no no no no, I never want to do that". And they said "no problem! You change your mind, here is our card". (...) So I decided after the first parole hearing that I was going to do (mediation)*'.

Another reason why victims were satisfied was the control over the execution of the restorative intervention. For instance, victim-participants to VOM are offered the choice between shuttle mediation and a face-to-face encounter meeting with the offender. Only four respondents chose to limit the intervention to shuttle mediation. For them, the sole

purpose of the intervention was to get the answers they needed or an agreement through the indirect communication liaised by the mediator. These four respondents decided from the start that they did not want to meet with the offender face-to-face. In one case, neither the offender nor the victim knew what the other one looked like (the victim had been hit by a random shot from the offender). This respondent was not interested to know what the offender looked like, and she did not want the offender to know who she was either. Another respondent did not want to have anything to do with the offender, whom she had known before the crime, and feared she would not have been able to restrain herself when being confronted with him. The remaining two simply did not feel the need to meet the offender again.

Furthermore, in Canada, the respondents were offered the possibility to write a letter to the offender or to send a video message, *etc.* in preparation for the face-to-face meeting, or as the sole option they wanted to use.

> (Helga) '*I really liked the fact that they gave me information about what my options were, that was very clear. (...) It gives the victim some sense of control. Yeah, it gave me a sense of control when I was able to chose what I wanted, what I wanted to happen*'.

What is more, the respondents said to have felt in control of the topics that were to be addressed during the VOM, FGC or VOE meeting. Two respondents, for instance, explicitly requested not to talk about compensation, because they only found it fair for the judge to address this question, both for the victim's and for the offender's sake. It was also appreciated that participants are allowed to refuse to answer the offender's questions if they did not feel comfortable to.

> (Erin) '*And (the mediators) were excellent not to ... , "we don't want to put words in your mouth, we just want* your *feelings, what you want to do"*'.

> (Larry) '*I had actually made very clear arrangements with (the mediator) that I wanted to talk about this and that, but not about other things*'.
>
> (Translated by the author from Dutch: '*Ik had eigenlijk klare afspraken gemaakt men de (bemiddelaar), van "kijk, ik wil over dat en dat wil ik praten, over ander dingen niet"*'.)
>
> (Christa, who felt in control during the VOE) '*C'est toi qui décide, t'es pas obligée de répondre (à leur questions). (...) S'ils te posent des questions, t'es pas obligée de répondre, c'est toi le chef d'orchestre*'.

The respondents involved in an FGC (N=2) mention that they appreciated the feedback they received on the execution of the juvenile offender's intention plan, agreed upon during the FGC meeting. It complemented their sense of involvement.

In other words, through the restorative intervention the respondents felt they had some sense of control. This sense of control did not only empower them, but also made them feel safe. The victims did not just feel involved; they felt they were in the driver's seat.

> (Dana) '*From the very beginning, (the mediator) told me that I was in the driver's seat and it was all about what I needed and what I wanted, it wasn't about, you know, anyone else. And that I could stop at any time. So, it was really awesome because all of a sudden I felt safe*'.

Some exceptions apply, however. In one case the respondent had to wait for the mediator to decide whether he found her ready to meet the offender. Not that this affected the respondent's appreciation of her interaction with the mediator, on the contrary. The respondent in question respected the mediator's persistence in ensuring she was well prepared. Two other respondents feel that the offender still had more control over the meetings than they did, *i.e.* in not showing up or leaving before the end of the meeting or taking his time to decide whether or not he wanted to meet again to try and address the remaining unresolved issues, which they found frustrating.

> (Jeanne, who has not been able to reach an agreement with the offender yet) '*The ball is in his court now. While it should be in our court. It is not right that (the offender) is the one who'll decide, the one who has been troubling us, and he is the one going to decide what can still happen and what can't. That is not right*'.
>
> (Translated by the author from Dutch: '*De bal ligt nu in zijn kamp. Terwijl hij eigenlijk in ons kamp moet liggen. Dat kan toch niet dat (de dader) nu gaat beslissen eigenlijk, die met ons voeten gespeeld heeft, en hij gaat nu bepalen wat nog kan en wat niet kan. En dat klopt toch eigenlijk niet hé*'.)

4.3.3. Multi-layered voice towards the offender

One of the concrete applications of process control is to literally voice concerns and emotions. The victims' voice was addressed to the offender or surrogate offenders. They were the ones who had to hear the victims' concerns and message. For the majority of the respondents in our sample this was the main motivation to participate in the restorative intervention. Having voice served descriptive, emotion-expressive and value-expressive purposes.

Respondents wanted to describe the consequences of victimization to the offender or the surrogate offenders. Twenty-one respondents bring up that they wanted the offenders to hear directly how the crime had impacted their life. First-hand information from the victim on the consequences of victimization would affect offenders and raise their awareness more effectively according to the respondents. The VOE, framed in victim awareness courses for convicted offenders, of course explicitly comply with this idea and serve the very purpose of confronting offenders with victims' experiences. But also VOM and FGC respondents referred to the need to describe the consequences to the offender(s). For instance, three respondents mention that they did not have the impression that their testimony at the trial or their victim impact statement at the parole board made an impact on the offenders because they could not directly address and communicate with them.

> (Danielle) '*Ce que je trouve génial c'est que moi je leur parle, moi je leur dis ce que j'ai eu, les douleurs que ça peut amener. (…) Ça les réveille*'.
>
> (Irma) '*Quand je lui ai parlé de mon vécu, il en connaissait rien. (…) Je ne l'ai pas parlé de tous mes problèmes psychologiques, mais les gros. Ça l'a vraiment étonné. (…) Et il m'a dit "mais moi je ne savais pas ça". J'ai dit "ben, (il y a quand même des) éducateurs qui peuvent t'en parler!". (…) J'étais inexistante en tant que victime (dans l'institution) et ça je n'accepte pas. (…) Je voulais que ça soit quelque chose de constructive*'.
>
> (Vanessa) '*"I want you to know what it feels like to be in my shoes. (…) Thanks to you, three people are out on the street now. They don't have a roof over their heads; they have to almost beg for clothes. (…) I'm in debt now, debt I can hardly repay. Costs that I wouldn't have had if it wasn't for you. (…) You did not only make my life a living hell at that time, but you still do"*'.
>
> (Translated by the author from Dutch: *"Ik ga u laten voelen wat dat is om in mijn schoenen te staan". (...) "Buiten staan er drie dankzij u op straat. Die hebben geen dak boven hun hoofd, moeten bedelen bij wijze van spreken voor kleren. (...) Met een heleboel schulden bij (onverstaanbaar) die ik helemaal, amper kan aflossen. Kosten die ik eigenlijk nooit had moeten maken die ik door u heb gehad. (...) Gij hebt mij niet alleen op dat moment mijn leven een hel gemaakt, maar nu na al die tijd nog altijd*'.)
>
> (Ginny) '*Moi, j'avais besoin de raconter, de ne plus rester invisible*'.

Sixteen respondents also mention that they needed the opportunity to express their emotions towards the offender. Emotions such as sadness and anger, but also forgiveness, needed to be heard by the offender in particular, again for them to realize the impact of his acts. The chance to voice emotions allowed for the respondents to liberate themselves. Although the sadness of having lost a loved-one or the anger of being afraid to leave the house did not disappear entirely, but expressing them towards the offender(s) was at least invigorating.

> (Jeanne) '*For us, mediation was good because we could vent our feelings*'.
>
> (Translated by the author from Dutch: '*Voor ons was de bemiddeling eigenlijk goed omdat, ge kunt uw hart nog eens luchten*'.)

> (Olga) '*I had all these mixed feelings, they clashed (...) in my head and my stomach. If you have to deal with all that on your own, that's just not possible, not for me in any case. I had to talk to someone about it. Also the fact that I had the chance to talk to (the offender) about it was very important to me*'.
>
> (Translated by the author from Dutch: '*Al die gemengde gevoelens die ik had, dat botste (...) in uw hoofd en in uw buik. Als ge dat alleen moet verwerken, dat zou nooit gaan, allé voor mij toch niet. Ik moet daarover kunnen spreken met iemand. En ook dat ik dat tegen (de dader) heb kunnen zeggen is ook heel belangrijk geweest voor mij*'.)
>
> (Petra) '*I think it's kind of a need for any person who has been harmed, to be able to say "look, this is what you did to me and why?". To be able to say "you did this to me and this is how I feel now and why did you …"*'.
>
> (Translated by the author from Dutch: '*Ik denk dat dat wel een beetje een behoefte is van de mens om als er hem onrecht is aangedaan, om dat te kunnen zeggen van "kijk, dat hebt ge mij nu aangedaan en waarom?". Om dat te kunnen zeggen "dat heb je mij aangedaan en zo voel ik mij en waarom hebt gij..."*.')

Finally, for eight respondents, voice served a value-expressive purpose. It allowed for the respondents to tell the offender that his past actions were wrong. They wanted to ensure that the offenders understood that such harmful behaviour is simply intolerable. Six respondents further mention that the offenders as people are not objectionable, but that their hurtful behaviour is unacceptable. By explaining what the consequences of the offence were, these respondents hoped that the offenders would desist from such behaviour and that they realized it was not too late to turn their lives around.

> (Dana) '*Offenders never really know what harms they have caused, (...) there isn't necessarily a connection made to (...) "I've hurt somebody and (...) I should be held accountable". (...) It would be really neat if that connection could be made.*'
>
> (Christa) '*Le but d'essayer de voir si les personnes qui font des actes comme ça, s'ils sont réellement conscients comment ils peuvent briser. (...) Leur dire que c'est pas humain de faire ça. (...) "Est-ce que vous êtes conscients que vous brisez?"*.'

> (Kirsten was shot when the offender was firing his gun randomly from his window) *'(The offender) said "I was high and I was actually just shooting at the houses across the street". But he should not have been doing that either, right. (...) I never really suspected he had been trying to hit me, because he didn't know me. (...) I always assumed he must have hit me by accident. But you know, he is not allowed to do that (just shooting his gun), right*'.
>
> (Translated by the author from Dutch: *'(De dader) had gezegd "ik zat onder drugs. Maar ik was eigenlijk aan het schieten op de huizen tegenover mij". Maar dat mag ook niet hé! (...) Ik denk niet dat hij echt zo heeft zitten mikken (op mij), want hij kende mij niet. (...) Ik dacht dat is iets per ongeluk. Maar ja, hij mag het niet hé*.')

In other words, voice was potentially therapeutic for the victims; it helps liberate victims from certain feelings and frustrations. Complying with the need to give voice to their concerns contributed directly to the satisfaction with the restorative intervention. Some intended their opportunity for voice to be useful for the offenders as well, in raising victim awareness and in highlighting the chance for the offender to turn to the right path (see further 5.4.).

4.3.4. Looking for process control, not for decision control

The aforementioned need for voice or process-control serves relational means (*i.e.* involvement reflects being respected as a member of the group). Victims were not looking for decision-control, which serves instrumental means (*i.e.* looking for involvement to maximize one's chances for a favourable outcome).

Admittedly, within the restorative interventions, decision control was not necessarily at stake. Firstly, a good number of the respondents (N=8) had no expectations with regard to a concrete agreement. Secondly, in the type of offences we studied, the violent ones, the restorative intervention to a lesser extent revolved around reaching a measurable agreement, and more about the informal, honest dialogue with the offender. Due to the less

tangible nature of the expected outcome of these meetings, such as the truth, apologies, expression of remorse, raising the offender's victim awareness instead of material outcomes (see 4.2.1.), it is not necessarily a matter of a decision to be directed by the victim. Considering the nature of our respondents' expectations, it is the offender who holds the control over the actual outcome. It is the offender who has to engage himself, to show remorse and to recognize the consequences of his acts (see also 4.2.3.).

> (Catherine) '*I had no expectations. I did not allow myself to get my hopes up. I was afraid to think that it would be good because all my history had been bad. (...) I just said to him, you know, "I forgive you and if I acknowledge you on the street, fine, but if I'm with my family, don't even look in my direction". That was our only agreement (unwritten)*'.
>
> (Winona) '*On est parti sur un truc de que du mensonge. On a travaillé sur ça. Et quand je disais "c'est pas vrai", c'était toujours sa parole qu'on t'amène. Et comme je ne suis pas la personne qui va me battre et débattre pendant des heures pour justifier "j'ai raison", j'abandonne. Ça sert à rien, tu sais, d'argumenter pendant des heures (...). Donc, si j'aurais voulu lui faire cracher en morceaux, peut-être que j'y serais arrivée. Mais ça sert à rien*.'

Moreover, the respondents were aware of the complementary nature of the restorative intervention with regard to the criminal justice proceedings. They had been informed that a judicial actor would still consider their file and would have the final word with regard to the sentence or reaction to the crime. It seems that they would not have wanted such decision control anyway. Respondents were glad that they were not burdened with decision-control and that they could delegate the decision-making power to the judicial authorities. Some (N=3) highlight, for instance, that they do not have any standards regarding a fair reaction to the offence and refer to the judicial actors as the experts on that matter. Accordingly, allowing for them to have decision-making power would just have been a burden (see chapter 6 for a more elaborate description of this observation).

4.3.5. Process control has more explanatory value than self-selection bias

Victims want to be involved, be taken into consideration, voice their concerns, be heard and participate in the proceedings. In the terms of the procedural justice theory, this translates into the need for process control. On top of that, the choice for being involved and for the degree of involvement adds to the perceived process control. The feeling of being in the driver's seat was important. This is often in contrast to having felt recuperated in the criminal justice proceedings and not being involved in dealing with the drama that touched them very personally. The victimization already left them feeling somewhat disoriented, or even destructed. The depersonalization of the judicial file and the feeling of being excluded only added to this feeling of alienation. The criminal justice proceedings in that sense deprived them of a target for their anger as they are being diverted into the periphery of procedures that focused on the offender (Christie, 2010).

Process control has more explanatory value than the self-selection bias proposed by Latimer and colleagues (Latimer, Dowden & Muise, 2005). Satisfaction is not necessarily related to a certain predisposition of victims who accept to participate in a restorative intervention, *i.e.* a general openness to alternative dispute resolution, a willingness to engage in it due to specific circumstances, or pure curiosity. It might rather be the nature of the restorative approach in itself that impacts the participants' satisfaction, *i.e.* by allowing participants to refuse or accept the offer and to direct the execution of the intervention facilitated by a mediator within the deontological framework of the intervention. Victim satisfaction is not only related to the opportunity to *choose to participate*, *i.e.* self-selection, but also to the sense of process control and actual voice *during* the execution of the intervention. The idea of process control is more discerning and comprehensive than the self-selection bias, used to temper rather than explain the outstanding impact of restorative practices on participants' satisfaction.

4.4. Other procedural determinants

Procedural justice research clearly demonstrates that procedures and outcomes can be assessed independently and that voice is a major element in what is perceived as a fair procedure. However, what other elements a fair procedure is composed of is not carved in stone. A great variety of research projects have produced an equally great diversity of procedural determinants. In other words, there is no exhaustive list of procedural determinants. In a 2000 article, Tom Tyler, without discussion one of the leading procedural justice scholars, enlisted respect, trust and neutrality, in addition to voice, as procedural determinants, based on his study of procedural justice research findings (Tyler, 2000a). Respect, as well as voice, is related to the quality of the treatment of disputants, while trust and neutrality are related to the quality of the decision-making.

4.4.1. Respect

Victims want to be treated with respect and consideration for their dignity. The right to a respectful treatment is one of the victim's rights mentioned in the 1985 UN Victims' Declaration, in the 2001 European Council Framework Decision on the standing of victims in the criminal proceedings as well as in the Canadian Bill of Victims' Rights. It is a factor that is also prevalent in the assessment of restorative interventions by our respondents, albeit rather implicitly. As indicated before, the respondents made a distinction between the input from the mediator and the offender (see 4.2.3.). Consequently, victims appreciated having been treated respectfully by the mediator as well as by the offender or surrogate offenders.

The respect from the mediator seems to be implied in the restorative approach. Respondents did not explicitly refer to having felt respected by the mediator, with the exception of two.

One felt that one of the mediators present at the face-to-face meeting did not believe her and gave the impression that he believed the offender to be the victim of aggression. One respondent described how she felt supported because she sensed the mediator accepted her story and did not judge her.

> (Catherine) '*So people believed me but they didn't express the belief and they didn't make me feel like I was believed, I don't know how to describe it, it is just … for the very first time, it was (the mediators) who made me… they valued my need, they valued my opinion, they respected my opinion*'.

Sometimes to their own surprise, and therefore maybe more noticeably, several respondents (N=11) refer to having felt respected by the offender. The offenders listened attentively to what the victims had to say, looked sincerely interested, and communicated respectfully. One of the respondents, a victim of sexual abuse, was used to more offensive and insulting language from the offender and appreciated the offender's new, respectful attitude.

> (Annette, who participated in a VOE involving 10 inmates) '*Ils étaient à l'écoute. (…) Un sur dix que c'était un peu du regard. (…) Je ne m'attendais pas à ce qu'ils soient tous à l'écoute*'.
>
> (Burt, who participated in a VOE with another victim) '*Ils avaient l'air sincères. On a toujours été respecté par eux-autres. … Tsé, il y a eu un respect mutuel entre les deux. Pour moi, c'est une chose importante*'.

Moreover, offenders would sometimes thank the victim-participants for having been willing to accept the invitation for the restorative intervention or for having initiated it. This might also have added to the respondents' perception of having been respected and contributed to their satisfaction with the intervention and with the meeting with the offender(s) in particular.

> (Herman) '*When we left (the meeting), he shook my hand and thanked me for having done all this for him. It sat well with him, I think. (…) He realized all too well that it could have turned out very differently if I had obstructed (mediation)*'.
>
> (Translated by the author from Dutch: '*Toen we daar vertrokken zijn, gaf hij mij een hand voor het feit dat ik dat allemaal voor hem gedaan had. Het zat hem wel goed denk ik. (…) Hij beseft het maar al te goed dus dat het heel anders had kunnen uitdraaien als ik dwars had gelegen*'.)
>
> (Burt, who took part in a VOE with another victim) '*(Les détenus dans le groupe) sont venus nous donner la main, ils ont tous dit merci. J'ai trouvé ça surprenant. Ils disent "merci, regarde, ça va aider à comprendre le mal que j'ai fait".*'

On the other hand, offenders sometimes failed to show respect (N=7). For instance, they did not seem to take the intervention seriously, dominated the conversation, pressured the victim into forgiveness or played the victim part. Each one of these seven respondents was also dissatisfied with the outcome of the restorative intervention, although they appreciated the mediator's treatment and support and the opportunity for voice and therefore do not reject the intervention entirely (see 4.2.2.). These respondents were satisfied with their participation despite the negative attitude from the offender.

> (Vanessa) '*(The offender) said, "I'm sorry but I couldn't do anything about it. Also, I'm more a victim than you are". That made me very angry*'.
>
> (Translated by the author from Dutch: '*Hij zei 'ik heb er spijt van. Ik kan er niks aan doen. Maar ik ben nog meer slachtoffer' (...). Dat maakte mij heel kwaad*'.)
>
> (Burt, who participated in a VOE) '*Il y en a un (prisonnier dans le groupe), (…) il me faisait tellement pensé à celui qui a le plus abusé de moi. Il était toujours en train de me dire "oui, mais il faut nous pardonner, nous pardonner", "oui, mais regarde, (…) je vais pas te pardonner là (incompréhensible), tout le mal que t'as fait à l'entour de toi là". (…) (Et) il a pris quasiment trois quarts du temps juste pour ses hostis de questions niaiseuses qui étaient très peu pertinentes là. (…) Un moment donné il avait même été (irrespectueux) avec (le médiateur). Pis il s'est fait fermé (la gueule) par tout le monde*'.

4.4.2. Trust

The aforementioned procedural determinants of voice and respect are associated with the treatment of disputants. The following determinants, trust and neutrality, are related to the achievement of a concrete decision and outcome. Trust has to do with the assessment of the motives of the authorities with regard to the outcome and the authorities' use of their discretionary competences. All this affects the perception of whether these authorities consider the parties' concerns in the decision-making. Because the respondents do not see the mediator as a decision-maker, but as a facilitator, trust in the mediator is situated on a more organic, interpersonal level. It is about the quality of the contact with the mediator, about being able to confide in the mediator, and about the mediator feeling familiar. The fact that respondents (N=12) felt they could trust the mediator and his judgement, for instance with regard to the offender's sincerity, made them feel comfortable. Sometimes the trust in the mediator was instrumental in having accepted the invitation to the restorative offer, which was unknown prior to the invitation (N=4).

> (Annette) '*(Au service) j'étais à la bonne place pour raconter (mon histoire). (…) Je faisais confiance. (…) Si (l'intervenante) te demande d'aller (à la rencontre détenus-victimes) ce n'est pas pour rien. (…) C'est surement pas pour me faire rentrer dedans là. (…) Parce que je me disais, si je collabore pas, (l'intervenante) pourra pas m'aider. Tsé, quand tu cherches de l'aide et tu collabores pas, ben, c'est dur pour l'autre personne de dire "je vais t'aider". Fait que, je me disais, si elle me demande d'aller là, c'est pas pour rien*'.
>
> (Alma) '*(Le médiateur) te met tellement en confiance que tu te laisses aller assez vite là. (Le médiateur) te mène à avoir confiance et va faire des jokes*'.
>
> (Fiona) '*I got to know (the mediators) quite well and I trusted their opinion*'.

As indicated before, in these cases of violent crime, in which victims have less tangible expectations, there is no real decision to be taken by the victim. The restorative outcome is

solely dependent on the offender's effort to engage himself and to comply with the victim's request (see 4.2.3). Trust can then be translated in terms of the respondent's assessment of the offender's sincerity in engaging in the restorative intervention, which the offender sometimes failed to achieve (N=5). For example, respondents could not appreciate the offender clearly using the restorative intervention uniquely to their own advantage, *i.e.* to make a good impression on the judicial authorities and hence to avoid a (severe) sentence or to get parole. Such an ulterior motive on the part of the offender was cause for frustration for the victims. It also resulted in an unfavourable outcome, since what these respondents were looking for was for the offender to accept responsibility. The overall assessment of the restorative intervention might have been affected in this regard, but these victims were still satisfied with their participation and with the restorative intervention. The offender's insincerity first and foremost affected the respondent's evaluation of the offender's efforts, not the assessment of the treatment by the mediator.

> (Larry) '*I had been suspecting that it was just a game for (the offender) (...) I had the impression that it was convenient for him, that he just did it because it would look better in his file*'.
>
> (Translated by the author from Dutch: '*Ik had zo al het vermoeden (...) dat het gewoon een spel was voor hem (...). Ik had gewoon de indruk dat het voor hem goed uitkwam, dat het gewoon moest omdat het beter in zijn dossier zou passen*'.)

4.4.3. Neutrality

In the framework of the procedural justice theory neutrality is defined as the honesty, impartiality, decision accuracy and objectivity of the authorities dealing with the conflict. The mediator's role to facilitate the communication between victim and offender and assist both parties implies neutrality, but that should not diminish its potential value as a factor for satisfaction. Ten respondents explicitly refer to the mediator's neutrality as a satisfactory element in the execution of the restorative intervention.

Those who accepted to meet their offender face-to-face appreciated the fact that the mediation took place on neutral territory, for instance in the mediator' office, in a community centre, in an old church or in a conference room in a hotel.

> (Herman) '*We met at an anonymous place, so not at his place but not at ours either. (…) So we could be anonymous there*'.
>
> (Translated by the author from Dutch: '*Hebben we ook op een anonieme plaats (afgesproken), dus niet bij hem of niet bij ons. (...) Dus, daar zijn we anoniem*'.)
>
> (Dana) '*We met in a (…) sanctuary in (X). It was an old (building) that had stained glass windows and wooden (beams) and stuff, you know. So it was a very safe space that (the mediator) was able to create and I was able to meet (the offender) again*'.

Furthermore, eight respondents highlight their appreciation for the mediators' non-judgemental attitude to the respondent as well as to their offender. They felt the mediators did not choose sides either for them or for the offender. They were available for both and prepared both equally for the face-to-face meeting, which was much needed by both. They noted that the mediator was able to pass along their messages and questions in the shuttle communication (often as a preparation for the face-to-face but sometimes as the only communication between victim and offender) in a neutral manner, translating the message but not deforming or changing its content. The mediators did not interfere in the eventual face-to-face conversation either. They would only intervene to help the victim or offender if needed, *e.g.* when one of the parties would loose his train of thought. However, they never directed the conversation.

> (Xander) '*They are the mediators, so to speak, and, therefore, they have to support both the victim and the offender, they are not allowed to choose sides, and in my opinion they did it well, that is to say, they were neutral*'.
>
> (Translated by the author from Dutch: '*Die zijn de bemiddelaars om het zo te zeggen, dus die moeten zowel eigenlijk slachtoffer als dader steunen, die mogen geen partij kiezen, en in mijn ogen hebben die dat goed gedaan, allé, zijn die daar neutraal in geweest*'.)

(Olga) '*There were things I wanted to know from (the offender), things that bothered me. And then we would go over my questions (for the shuttle mediation) first, me and (the mediator). And (the mediator) would make additional notes, in order for her to know exactly what I was looking for. And (the mediator) would say "is this what you mean? Can I put it like this? (The mediator) was always neutral. (...) In the end, (the offender) also knows (the mediator) is someone neutral, that (the mediator) will not shout at (the offender) for instance, but is only there to mediate and not to choose sides*'.

(Translated by the author from Dutch: '*Met dingen die ik wou vragen aan (de dader), waarmee ik zat. Dingen die ik wou weten. En wij overliepen dan eerst die vragen altijd, ik en (de bemiddelaar). En (de bemiddelaar) noteerde nog dingen daarbij zo, dat (de bemiddelaar) goed duidelijk wist waar ik naartoe wou. Dan zei (de bemiddelaar) "ja, begrijp ik het zo goed? Mag ik het zo noteren?". (...) (De bemiddelaar) is altijd neutraal gebleven. (...) Want uiteindelijk (de dader) weet dat het een neutraal iemand is, dus dat (de bemiddelaar) (de dader) daar niet gaat beginnen uitmaken of zo bijvoorbeeld, dat (de bemiddelaar) daar is ter bemiddeling van de partijen en niet om partij te kiezen*'.)

(Rita) '*Et les médiateurs qui sont avec nous, ben eux, ils ne sont pas là pour nous imposer un choix de discussion. Ils sont là pour nous aider si on tombe court de mot ou rappeler. Ils servent à ça. (...) Les médiateurs ne prennent pas position, ni pour l'un, ni pour l'autre*'.

4.5. Victims looking for recognition

4.5.1. Recognition from the offender

The victims in our sample indicated that the results from or what they had hoped would result from the restorative meeting with their offender or with surrogate offenders, was for the offender(s) to recognize and acknowledge the consequences of the harmful events, his or their responsibility as well as the victim as a non-provoking, innocent person (N=21).

(Yann) '*C'est de rencontrer (l'auteur), de lui parler et de sentir que finalement il a quand même un respect. Et il est conscient de ce qu'il a fait.*

> *(…) C'est surtout qu'il m'a dit "je comprends". C'est ça, je voulais, qu'il comprenne, que c'est lui qui était en tort*'.

The need to be freed from blame is specifically strong among victims of sexual aggression and physical assault. The sexual offence victims in our sample (N=8) had often been told by the offender that he was seduced or that the victim had allowed him to make advances, for instance. They had also blamed themselves as a result, a feeling common among sexual assault victims (Burgess & Holmstrom, 1974; Resick, 1987). The perception of the offender or surrogate offenders taking over the blame and guilt was incredibly liberating.

> (Annette) '*(Les) détenus ont pris tout ce qui ne m'appartenait pas et m'ont donné ce qui m'appartenait. (…) C'est pas moi la coupable*.'
>
> (Dana) '*By the time I came out (of the prison) at the end of the day it felt like this huge weight had lifted of my shoulders. (…) And I felt like (the guilt, the shame) that I had at that time, I gave back to (the offender) and he accepted it and validated it. (…) (To) really hear more about that it wasn't my fault. It was a rape and all that has happened was because the really twisted ideas that (he) had. It wasn't because I was, you know, wanted a romantic relationship or something. So that was very validating and very healing*'.
>
> (Catherine) '*What I got out of (the face-to-face with the offender) that meant the most to me was the fact that (the offender) acknowledged what he did to me for the very first time. Instead of calling me "a lying little bitch" – pardon my language but that was his expression all my life (…). I did try to reach out for help to people. Whether family, friends, the law, it didn't matter, he always told everybody the same thing. So it was really the most gratifying moment when he acknowledged in front of (the mediator) that, yes, he had done those things to me and that, no, I was not lying*'.

In some instances (N=5) the need for the offender's recognition arose following the offender's negative attitude in court, persistently denying his responsibility and blaming others in order to save his own skin, at the expense of the victim. In other words, defence strategies used in court, either in the inquisitorial or in the adversarial regime, can hinder

victims to hear the offender acknowledge the truth and to receive recognition of their victimization, which they then seek in a restorative intervention, allowing for informal and unconditional communication with the offender.

> Vanessa lost everything but her kids in the fire set to her house by the offender. It is frustrating for her that the offender managed to get a reduced sentence because he kept lying about his role and there was no material proof against him. '*He kept denying it, he had said that he had been high on hard drugs (...), he was not sent to* Assises*, but to the regular correctional court and, therefore, got a reduced sentence out of it. And what I think was really ugly, was to hear (the offender say during mediation) "well, I actually should have gone to* Assises *and gotten attempted murder and that would have cost me more and I would have never be released, or maybe in six, seven years, and now I got off cheaper because I played the fool". (...) I cannot imagine myself in his situation, I would never do anything wrong, but I would not try to save my own skin at the expense of another. I would try to get of cheap, but not at the expense of little kids*'.
>
> (Translated by the author from Dutch: '*Doordat hij het ook constant ontkend heeft, hij had dan gezegd dat hij zwaar gedrogeerd was (...), is hij dan in (de plaats) van naar Assisen, is hij dan naar een gewone correctionele rechtbank gekomen en heeft hij nog zo een verminderde straf gekregen. En dat vond ik dan nog het smerigste van allemaal want dan te horen (van de dader tijdens bemiddeling) zo 'kijk, eigenlijk had ik assisen gehad en poging op moord en dat had veel meer gekost en dan was ik nooit vrij gekomen misschien, of wel binnen zes, zeven jaar en nu heb ik goedkoper gekregen doordat ik een beetje de onnozelaar heb uitgehangen'. (...) Ik kan mij dat nooit niet in die situatie voorstellen, ik zal ook nooit niks doen, maar ik zou ook proberen mijn eigen vel te redden, maar niet ten koste van een ander. Wel proberen op een of andere manier er goedkoop vanaf te komen, maar niet ten koste van klein mannen*'.)

In this regard, a good number of respondents (N=9) also mention the importance of an apology as a sign of the offender's acknowledgement, even if they felt that the apology might not have been entirely sincere and forced by their lawyer or relatives, which was the case for three victims. Even in those two cases, the gesture was still mostly appreciated.

> (Xander) '*If you experience something like that, like those guys punching me to the ground, all you can think is "what are we doing to each other, what's happening with the world?!". And then if this guy is able to apologize, then*

> *you're like, okay, it brings back some order in the chaos, and makes everything normal again*'.
>
> (Translated by the author from Dutch: '*En als ge zoiets meemaakt, gelijk als die gasten me daar hebben tegen de grond geslagen, dan hebt ge zoiets van "waar zijn we mee bezig, waar gaat de wereld naartoe?!". En dan als die gast zich dan kan verontschuldigen, dan hebt ge zoiets van oké, dat maakt het de orde in de chaos een beetje terug, maakt het allemaal weer wat normaal*'.)
>
> (Frankie) '*Il s'est excusé, ça a fait énormément du bien, même si c'est son avocat qui lui a dit (de s'excuser), même si ça a été soufflé. (...) Il y a quelqu'un qui vous a fait du mal et puis il vous demande pardon, je pense que beaucoup de victimes s'attendent à ça. Ça a fait énormément du bien*'.

Three respondents mention that their offender had thanked them during the restorative encounter for having filed a complaint. That was also much appreciated and validating.

> (Alma) '*Et le fait que (l'auteur) m'a dit merci d'avoir porté plainte. Je pense si il aurait pas dit ça, je sais pas… . Ça a beaucoup aidé par exemple. Parce que je m'en voulais beaucoup. C'est lui qui me dit merci. Que grâce à moi il avait pu faire un travail sur lui*'.

In the cases in which the offender showed remorse and a willingness to accept responsibility, the respondents felt validated and empowered.

> (Annette) '*C'est le fait de me faire confirmer. "Mais oui, oui, t'as vécu… pis t'as raison d'en parler"*'.
>
> (Dana) '*And (the offender) told me that I had the right to be angry, and he said that I was a truth-teller. So having him validate that at that time was really awesome*'.
>
> (Danielle, on her experience in the VOE) '*Je me sentais valorisée*'.

While the willingness to accept responsibility is principally a criterion for the offender's participation in a restorative intervention, not all offenders seemed to have complied fully with this need for recognition of responsibility, at least not in the victims' perception, *e.g.* by continuously lying, trying to get of easy, *etc*. in the mediation procedure. Again, if this was the impression the respondents had from the offender, his efforts and attitude as well as the restorative outcome associated with it were seen as unfavourable, as has been illustrated above (see 4.2.3.).

Finally, despite the importance of the informal recognition of accountability and the victim by the offender in the framework of the restorative intervention, it does not always suffice for the victim. In addition, the majority of the respondents needed for the offender to be held accountable on a formal, public level, namely by the criminal justice authorities. Recognition of the offender's accountability on both an informal and formal level was considered important by the respondents for their recovery, and recognition on one level does not replace the need for recognition on the other level (see 6.2. for an elaborate discussion of this observation).

4.5.2. Recognition from others

Not only were our respondents looking for recognition of his responsibility by the offender; there were also other reference groups the victims needed recognition and validation from. Apart from the recognition from the offender or from the surrogate offenders within the framework of the restorative intervention, two respondents explicitly mention having appreciated the mediator's validation. Such validation includes the impression of the mediator accepting the victim's story and the sincerity and earnestness the mediator displayed, leading to the respondent to feel safe and to trust the mediator. Recognition and validation from the mediator were in themselves appeasing.

> (Dana) '*When I talked to (the mediator) about (my experiences), he was able to validate that and that was very healing. Talking with him (was) validating and hopeful. (…) I felt like somebody was listening to me and was believing me and all of a sudden I felt a lot safer*'.

Furthermore, a fair number of respondents (N=20) refer to the need for recognition of their victimization and their non-provoking part in it by significant others as well as by police officers, the prosecutor, the judge and support workers. Recognition implies, for instance, that their complaint was taken seriously, that they were not blamed for what happened, that they were not treated like another file number. Especially in physical assault cases, in which it is not always clear to outsiders who the instigator might have been, it was important for the respondents to specify that they had not provoked the violence whatsoever. Again, for the sexual assault victims, all of whom had been abused by a relative or a friend of the family, it was important that their relatives understood and acknowledged that the victims had neither consented nor made advances on the offender. Adding to their self-blame and shame, the victims' relatives often tended to deny or ignore the accusations directed at one of their own friends or relatives or blamed the victims for not having stood up against the offender. Such inadequate social support following the disclosure of the sexual aggression can increase the probability of traumatic stress (Guay, Billette & Marchand, 2002; Khouzam, Marchand & Guay, 2007).

> (Ginny) '*Durant notre vie, il y a eu toute la confusion, toutes les accusations, que c'était de notre faute, la culpabilité, la honte, tous ces émotions là, *wow*, on a eu assez de claques à quelque part et d'être "menteuses", paraît-on d'exagérer. (…) Ma sœur la plus jeune aussi m'avait mentionné à l'époque "ben, moi aussi mais il a essayé sur moi mais moi j'ai dit non". Je vais te dire que quand tu te sens déjà coupable, ça, ça ajoute à la culpabilité*'.

> (Xander) '*Look here, for example, in this letter from the hospital: " Patient was the victim of a fight". That does not clarify that (…) I did not start the fight, right. (…) Such documents are sent to the insurance company, to my*

> *employer, … . (…) If you read it as it is stated there (…), you will not immediately imagine that I was really just standing there*'.
>
> (Translated by the author from Dutch: '*Kijk, bijvoorbeeld hier, de brief van het (ziekenhuis), "(...) Patiënt was slachtoffer van een vechtpartij". Dat maakt niet duidelijk of dat ik dan (...) de vechtpartij begonnen ben hé. (...) Dat zijn documenten van het ziekenhuis die dan bijvoorbeeld naar de verzekering gaat, naar mijn baas, ... (...) Ja, als ge het zo leest (...), dan maakt ge niet meteen de link dat ik daar gewoon zo gestaan heb*').

In fourteen cases, the respondents noted the lack of such recognition from a police officer, the prosecutor, a family member or other, and described it as disappointing or even destructive. The lack of recognition of the seriousness of the consequences of the victimization in two cases translated into the victims missing out on much needed practical and emotional support.

> (Jeanne, whose case was postponed at the request of the defence lawyer, which was contested by her as the civil party) '*If (the judge) then immediately says "yes, well, we still have cases from 2001 that have not been dealt with and this and that", that made me feel as if "you are not important enough". (…) "We have more urgent files dating from 2001, which have not been adjudicated". That is not something* we *are responsible for! That is the court's fault. (…) I know the court has a huge amount of work and maybe is not able to manage it all, but, well…*'.
>
> (Translated by the author from Dutch: '*Maar als (de rechter) dan al direct begint van "ja maar, we hebben nog zaken van 2001 en die zijn nog niet afgehandeld en dit en dat", dat kwam mij over alsof "ge zijt niet belangrijk genoeg". (...) "We hebben nog dringender zaken die al dateren van 2001 en die nog niet uitgesproken zijn". Maar daar kunnen* wij *niks aan doen ! Dat is de fout van het gerecht. (...) Ik weet het gerecht heeft enorm veel werk en krijgt het misschien niet gedaan, maar, ja...*'.)

> (Ines, a collateral victim, *i.e.* related to the offender instead of to the direct murder victim) '*Mais j'ai entendu dire qu'il y avait de l'aide pour les (…) victimes, j'ai dit, "je vais essayer", j'étais bien innocente. J'ai essayé d'avoir de l'aide, voir pour me faire aider, *ts ts ts*, j'étais pas éligible. (…) Le gouvernement n'investit pas beaucoup pour aider les familles (des auteurs). Elles sont victimes indirectes ou collatérales comme moi. (…) On catégorise dans la société. (…) On fait beaucoup la distinction entre les bonnes et les méchantes (victimes)*'.

4.5.3. Recognition equals justice

According to Umbreit (1989), a pioneer in the field of restorative practices and evaluative research regarding their application, victims are not looking for revenge, but for fairness. More precisely, a good number of victims in our sample (N=7) describe fairness, or justice, as the recognition of responsibility by the offender and the offender to be formally held accountable. As one victim put it, the degree of justice does not equal the degree of punishment. Justice is for the offender to be held accountable and the victim to be recognized. That in itself was or would have often been enough. In analogy with Lerner's just world effect (Lerner, 1977, 1998), the offender's recognition of responsibility and his apology could restore the image of a just world, which was disrupted by the victimization.

> (Dana) '*I told (the mediator) what I was looking for, that I really wanted justice and what justice meant to me. And he seemed to agree that, you know, justice was more about holding the offender accountable rather than punishment and so that was really what I wanted. (...) The kind of justice that you're extending to Joe Public is that the degree of punishment is the degree of justice. (...) Punishment does not create safety. The longer you punish somebody, the more you harm them and the more likely they are when they go back into society, and most of them go back (out), the more likely they are to harm somebody (...) (The offender) didn't harm the Queen and her constituents. He harmed me. (...) Justice for me was having the opportunity to tell (the offender) face-to-face what harm he had caused and hold him accountable for those harms and to create, you know, hopefully a situation where there would be apology, and there would be some restitution and that we could both be healed, rather than, you know, me further victimized and he harmed by being punished'*.
>
> (Fiona) '*All I ever wanted (the offender) to do was stand up and say "I'm responsible". (...) (My husband) and I went in (the criminal justice proceedings) saying that all we want him to do is to be held responsible. Somebody, a jury of peers to stand up and say "you are responsible". And whether he got three years or 33 years, wasn't changing anything for us*'.

In one particular case, the respondent notes that she would have ceased her civil claim and even insisted for the prosecutor to drop the charges, if only the offender had been honest at the face-to-face meeting and acknowledged, in the presence of the mediator, that he was accountable for what had happened and that he had not been provoked by the victim. However, the offender kept denying what had happened during the meeting, and only afterwards privately apologized to the victim for having lied, to avoid punishment. Therefore, the respondent saw no other option but to proceed before the court, hoping that the judge would then be able to clear her name and hold the offender publicly accountable. Ever since the assault she feels insecure and has a low self-esteem. She is afraid people will label her as the instigator, and is, therefore, specifically concerned to rectify her image as a credible citizen. Justice will not be done as long as the offender or the judicial authority does not recognize the offender's responsibility.

> (Winona) '*(L'auteur) était dans le mensonge tout le temps. (…) Et en sortant de là (de la rencontre), (…) (l'auteur) et moi, on a discuté pendant une heure et demie sur le pas de la porte chez (le service de médiation). (…) (L'auteur) venait me dire "excuse moi, mais je sais que j'ai menti, mais de m'en tirer du mieux possible en payant moins cher". (…) Je pense que ça pourrait être plus riche s'il avait été honnête (pendant la rencontre avec le médiateur). (…) Si (l'auteur) m'avait dit "écoute, j'ai fait une erreur, j'aurais pas dû venir t'agresser. Je suis désolé", j'aurais laissé tomber et honnêtement j'aurais demandé au tribunal qu'on classe cette affaire sans suite. Voilà. Mais le fait que (l'auteur) ne le reconnaisse pas… (…) Il le dit, mais derrière, devant personne. Il est assez intelligent de dire quand on est nous deux (…). Ça sera résolu le jour où on me dit "on reconnaît qu'il est venu vous agresser sans raison chez vous" et voilà. (…) Je crois que la seule chose qui pourrait le faire c'est que le tribunal reconnaisse son erreur et reconnaisse que moi j'étais chez moi bien tranquille (…). Que (l'auteur) dise la vérité quoi. Je crois que quand j'aurais ce reconnaissance, ça ira, mais en attendant …*'.

4.5.4. Recognition and the normative justice motive

Recognition of his responsibility by the offender, recognition of the victimization, validation of the victim, recognition of the non-provocation of the events by the victim can be explained by the group-value model described in the procedural justice framework proposed by Lind and Tyler (1988), or as they later called it, the relational model (Tyler & Lind, 1992). It suggests that people favour procedures that reflect them being considered as valid members of the group, *e.g.* the society represented by the judicial authorities and service providers. Disputants are preoccupied with the way they are approached and seen by others as this image affects their image of the self and of their social relationships. Being treated fairly by society and by its representatives implies that disputants are being regarded as respectful and valuable. The stronger the feeling of inclusion in a group, the stronger the impact of having had voice or having been refused voice in a dispute resolution on its fairness assessment (Van Prooijen, Van den Bos & Wilke, 2005).

The urge for recognition from the offender and from authorities described by our respondents fits neatly within this concept. Looking for recognition corresponds with looking for a value and standing in the group. Describing justice as the recognition of the victimization and the offender accepting and being held accountable corresponds with the relational justice motive.

The group-value model allows us to open up the reference group of the respondents to the society at large. Several victims in our sample (N=7) explicitly noted the need for recognition in the society. Non-compliance led the victims in question to feel disrespected and almost out-casted.

> (Irma) '*(Le juge au tribunal de jeunesse) ne nous a jamais vu, elle ne nous a jamais parlé, et alors elle a eu ce jugement (*i.e. *placement du jeune auteur).*

> *De nouveau se fausser. Alors on se dit mais "où est notre place dans la société?". Quelle place avons nous en tant que victime? (...) Il faut beaucoup se battre pour être reconnue. Un statut est quasi inexistant. (...) C'est tellement important d'être reconnue. (...) Je paie mes contributions, alors je suis bien citoyenne. Mais ma place de citoyenne en tant que victime, je vois pas très bien où elle est au niveau justice. (...) Une identité. Une reconnaissance, de dire "oui, vous êtes victime et c'est vrai que la société a une dette envers vous, au moins de vous reconnaître". (...) On est quand même des parents, dans le chagrin, mais on vie. On est quand même pas des extra-terrestres non plus*'.
>
> Dana only recently remembered new events for which the offender had not been charged and for which she filed a new complaint. The prosecutor did not accept this complaint. '*I have been told that it wouldn't be in the best interest of the public, so Crown wouldn't pursue the charges (...). The Queen is not offended. Her and her (representatives) will not get of their butt on my behalf, because they have their own agenda. And they don't seem to think that (the offender) is a threat, so therefore it is not in the best interest to spend public money to put him in prison*'.

A particular issue with crime victims is the feeling of self-blame, or the feeling of '*could I have prevented this?*'. This notion is not addressed in the procedural justice theory, as the majority of studies in this regard are applied to lower impact situations. Lerner (1998) indicates that bystanders tend to look for an explanation for the victimization, for instance by blaming the victim, in order to maintain their false image of a just and orderly world. By doing so, people ward off the probability of being aggressed and protect their impression of safety. It goes without saying that such reaction is harmful for the victim. The more respondents felt recognized as the harmed party, the more their feelings of self-blame were countered. Recognition as such was in itself restorative.

> (TVC) '*Quand tu décris les rencontres avec les (victimes de l'auteur, à qui elle était reliée) comme réparatrice, c'est réparatrice dans quel sens pour vous?*' (Ines) '*Réparatrice (...) surtout parce que tu ne sentes pas le jugement. Quand t'es avec des gens qui te pardonnent, ... les gens ne te jugent pas en tant qu'individu. Ils déplorent le geste, c'est clair, comme je le*

> *déplore moi-même, mais ces gens là vont croire que je peux continuer à vivre*'.

Hence, fairness is recognition and recognition is restorative. This need was most fully complied with in the restorative approach for most of the respondents. It was only at that occasion that the victim could see the offender face-to-face and have him acknowledge the harm done. It was at this moment that victims felt fully validated.

The apparent predominance of normative over instrumental means shows that the general assessment of the restorative approach might also explain the respondents' preference for process control over decision control. Normative means, *e.g.* looking for recognition and validation, knowing the truth, raising victim awareness and other less tangible outcomes, require a particular effort and sincerity from the offender, which the respondents can presumably not affect. Hence, there is not so much a need for decision control for the victim. There is nothing to decide; victims desire that this recognition is sincere and comes from the offender. It cannot be forced onto the offender. It does require for the victim to play an active role and be able to communicate with the offender, in a safe but informal environment, outside of the courtroom. This is what in the procedural justice framework is described as process control or voice. Furthermore, whatever the formal reaction to the offence must be is out of their hands. Victims do not want to be responsible for the formal decision and sentence, and therefore prefer to delegate decision control to judicial authorities.

4.6. The fair process effect in action

4.6.1. The fairness heuristic idea refreshed

As discussed in 1.2.6.2., in order for people to adequately assess a situation as just, they need information and indications of its fairness. The moment people enter a new situation they start looking for information that allows them to decide for themselves whether this is a good situation to be in. The more information on the situation is available, the easier it is to assess its fairness. Unfortunately, such information is not always readily available or comprehensible. Information might have been very accessible in the laboratory settings and role-play exercises primarily used in procedural justice research, but accessible information is certainly not a given in real life cases (Lind & Van den Bos, 2002). Often people find themselves confronted with unfamiliar and hence uncertain situations. Rather than being able to make an exhaustive evaluation of a situation, people will need to create a cognitive framework based on whatever limited information is available, which will serve to assess any subsequent information and allows those involved to manage the uncertainty. This concept is known as the fairness heuristic (Van den Bos, Vermunt & Wilke, 1997).

According to the fairness heuristic model, what comes first is what matters (Van den Bos, 1996). Rather than assuming that the fairness of the procedure dominates the assessment of the fairness of the outcome, the perceived fairness of the procedure or of the outcome, depending on which can be evaluated first, will function as a heuristic for the assessment of other elements. When information is primarily available on the procedure, it forms a cognitive shortcut for the interpretation of all the other elements that become available, such as the outcome (*e.g.* upon recruitment new employers are clearly informed that they have to reach a certain productivity level in order to get a pay raise; the perceived fairness

of this procedure will affect the assessment of the attribution or non-attribution of a pay raise at the end of the evaluation period). This is what is called the fair process effect. When the primary information available concerns the outcome, the perceived fairness of this outcome colours the assessment of the procedure, referred to as the outcome effect (*e.g.* an employer is told he is fired but does not know what led to this decision, who took it and why; this unfavourable decision can negatively impact his retroactive assessment of the decision-making procedure; the decision was unfair and therefore, the procedure must have been unfair).

4.6.2. No pre-established fairness heuristic

A first key source of information that is conducive in assessing the procedure and outcome is one's own experiences. Previous experiences with a certain proceeding can form a heuristic for interpreting new experiences with a similar proceeding, referred to as the primacy effect. Along with vicarious experiences and comparison with similar situations (Hegtvedt, 2006), one's own previous experiences impact expectations of future experiences. According to Van den Bos (1996) expectations are equally important in forming an interpretative framework, as is the actual information on the procedure and outcome (see 1.2.3.). He observed that consistency with one's expectations as well as with the information provided affect the fairness assessment. For instance, when disputants expect to be given process control, which is then not provided, the situation will most likely be found to be disappointing and hence, unfavourable.

However, none of our respondents had ever been involved in a restorative intervention before. All but three respondents had never even heard of the restorative practice before

being contacted by the mediation service or being referred to one.[24] None of them had ever been involved in the criminal justice either, with the exception of the two lawyers in our sample. It was the first time the victims in our sample found themselves having to deal with a violent crime and its consequences. In other words, the unfamiliarity with the situation was extremely high. They could not rely on vicarious experiences with restorative justice or with the criminal justice proceedings. Our respondents began with an entirely blank slate. According to Van den Bos, Vermunt and Wilke (1997) in such high uncertainty situations fairness heuristic is critical to manage the uncertainty one is confronted with.

> (Rita) '*Ce qui est – je vais dire – côté négative de la justice chez nous, c'est que la médiation est proposée (aux agresseurs). Ça a l'air que les prisonniers savent qu'il y a une médiation. Les victimes ne le savent pas. Voilà. Ça n'a rien à voir avec la médiation, mais je vais dire, la justice entoure plus les prisonniers que les victimes. (…) Moi j'avais jamais entendu parler du système de médiation quoi. (…) C'est parce que (l'auteur) en a fait la demande*'.
>
> (Ines) '*Quand j'ai accepté d'aller là je ne savais pas trop dans quoi je m'embarque, pour te dire vraiment là, j'étais pas au courant. J'avais jamais entendu parler de ça, la justice réparatrice, j'étais jamais aller dans la prison*'.

As a consequence, our respondents indicated that before meeting the mediator and actually going into the procedure they had no idea what to expect, neither from the restorative intervention, nor from the criminal justice proceedings for that matter. It can be expected that a violent crime and its consequences are in themselves destabilizing. The entire

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[24] As to VOM and FGC, three respondents got in touch with it because the offender had initiated it; twelve were invited by the mediator via the prosecutor; two do not remember who initiated the offer; one found information about the mediation service on the website of the correctional services; others were referred to the mediation service by a victim support worker (*e.g.* in Canada after having indicated on the registration form for the parole board that they wanted to be contacted by a mediator), a judicial actor or another professional actor. The VOE respondents were directly invited to the offer by the social worker at the victim support service affiliated to the VOE program or by the mediator.

situation seemed complex, preventing them from having certain concrete expectations with regard to the procedure.

> (Burt) '*Ben, (l'intervenant) me disait "écoute, je te donne la semaine pour réfléchir (si tu veux participer à la recontre détenus-victime). Donne moi une réponse la semaine prochaine quand tu viendras". Je me suis dit "regarde, pourquoi pas ?". (...) Je voulais vivre l'expérience. (...) J'avais vraiment aucune attente. (...) C'était pour ma satisfaction personnelle. (...) Je voulais y aller pour essayer de comprendre certaines choses. J'avais aucun but précis*'.
>
> (Jeanne) '*We had never heard of (VOM), but we called our lawyer to ask him what to do and he encouraged us to do it. (...) We had nothing to loose, right. It could only get better*'.
>
> (Translated by the author from Dutch: '*Nooit van gehoord maar advocaat gebeld om te vragen wat te doen en die moedigde het aan. (...) We hadden niks te verliezen eigenlijk hé. Het kon alleen maar beteren*').

Not all of the respondents had particular expectations with regard to the intervention; they did not know what to expect exactly. What they all hoped, though, was for the restorative intervention to be helpful in some way. For instance, a fair number of respondents (N=13) expressed their determination to take all the steps to help them advance, to do what it takes and confront their demons. They had questions that needed answers; they wanted to tell their side of the story to the offender and for the offender to acknowledge his responsibility. Motivations to accept the restorative offer were multiple but not so concrete as to form a fairness heuristic.

> (Christa) '*Dans le fond moi je veux m'en guérir le plus vite possible. (...) Je vais essayer du mieux que je peux à aller chercher les moyens pour que je puisse m'accomplir. (...) Quand une autre victime m'en avait parlé (des rencontres détenus-victime), et que ça l'avait fait du bien, j'en ai parlé avec mon intervenant. (...) Je l'ai demandé parce que je me suis dit "ça sera comme un complément".*'

> (Catherine) '*I know that I had a feeling that if I didn't take that one last step, that I was never going to be able to recuperate*'.

4.6.3. Main information source is the mediator

It seems that the respondents relied primarily on the mediator to establish their fairness heuristic. Mediators were appreciated for having been generous with information and this from the very first contact with the respondents, *i.e.* following the invitation to participate in a restorative intervention. Information regarding the restorative intervention was readily available and comprehensible. Provision of information and explanation is an integral part of the procedure. Respondents felt very well prepared for the intervention as a consequence thereof.

In order for the respondents to accept or refuse the restorative offer, they were informed about the general course of the intervention, its objectives, what was expected of them, the role of the mediator, the possibility to opt out of the intervention at any moment, *etc*. Because of their active involvement in the entire restorative procedure, they had direct access to the elements needed to assess its fairness.

An integral part of a restorative intervention is the preparation for a face-to-face with the offender or with surrogate offenders, if such a direct confrontation is what the participants are looking for. A face-to-face meeting took place in the large majority of the cases studied (N=30). Shuttle mediation, of course, makes up a big part of this preparatory work. It serves the very purpose of preparing both the victim and the offender for an eventual meeting. It allowed building up to the face-to-face meeting. The participants were prepared for the face-to-face meeting and its general course. Agreements were made about respectful

communication and about what to do if the victim would start feeling uncomfortable during the meeting. It resulted in the victim-participants feeling at ease with the confrontation.

> (Olga) '*I liked how it evolved at first, that (the mediator) came to me and then went to (the offender) with my questions. I would not have been able to immediately go to (the offender) to talk. No, that would not have worked. I liked how we built up to it*'.
>
> (Translated by the author from Dutch: '*Ik vond het ook goed dat dat in het begin zo verliep dat (de bemiddelaar) bij mij kwam en dan met mijn vragen naar (de dader). Maar om direct zo met (de dader) erover spreken, zou ik niet gekund hebben. Nee, dat zou niet gegaan zijn. Ik vond het goed dat dat zo was opgebouwd*'.)
>
> (Helga) '*(The mediators) were really instrumental in preparing both me and the offender to meet*'.

In other words, the uncertainty related to being confronted with an unfamiliar situation was taken away by the abundant and clear information provided by the mediator.

> (Vanessa) '*And (the mediator) was actually very straightforward (about what VOM is) and I really thought that was nice*'.
>
> (Translated by the author from Dutch: '*En die (bemiddelaar) heeft dat eigenlijk bij wijze van spreken geen doekskes rond gedraaid en ik vond dat gewoon tof*'.)
>
> (Erin) '*(The mediators) were so good at explaining things and letting you go, you know. (…) And (they) do a very good job over the course of your meetings and your talks to bring you to the "why are you doing this? What do you want from it"? (…) Thanks to (them) and everything, like coming so often, we would talk about things, and that made it easier to go there*'.

4.6.4. Observing the fair process effect

Hence, another observation of the compliance of restorative interventions with the procedural justice premises concerns the fair process effect. Due to the extensive information provided by the mediators, our respondents had a good idea of what they could expect from the procedure, and therefore, were quickly able to assess the situation, at the start of the intervention. This is in sharp contrast with their perception of the criminal justice system. The judicial proceedings were equally unfamiliar, but were also more complex. To top it of, the judicial proceedings were found to be non-transparent. Especially the tactics deployed by the defence were incomprehensible to most. A number of respondents (N=11) felt well-assisted and supported, for instance by the victim services at the court or by the prosecutor. But other respondents said to have received insufficient or unclear information about both the judicial procedures and outcomes, which resulted in these respondents feeling anxious with regard to the criminal justice proceedings.

Preparation and information provision are integral parts of the restorative procedure, and as such respondents primarily had information on the procedure. The outcome emerged from the communication between the victim and the offender, undirected but facilitated by the mediator. The actual outcome could then only be assessed at the end, after having been actively involved in the procedure. Following the fairness heuristic logic, and more specifically the fair process effect, the favourable assessment of the procedure, based on the clear and exhaustive information on the procedure, could have coloured the assessment of the restorative outcome.

4.7. An interactional dimension in the restorative approach

Within the procedural justice literature there is an ongoing debate about the number of independent dimensions of justice. Social justice scholars have not yet agreed on the significance of the interactional dimension of fairness and whether it should be regarded as a separate dimension from procedural fairness or as an integral part of procedural justice (see 1.2.6.). Whereas procedural fairness is related to the fairness of the decision-making process, interactional justice specifically focuses on the quality of the interactions in the process. It refers to the impact of the quality of the treatment, the enactment of the procedure, the behaviour of the authorities towards the disputants and the quality of the explanation of the procedure and outcome by the authorities on fairness judgments. Procedural justice scholars have captured the interactional dimension in the importance of trust, respect and dignified treatment for the assessment of fairness (Tyler, 2000a; Blader & Tyler, 2003). Lind *et al.* (1990) admit that the importance of a dignified treatment for fairness might have been underestimated in the procedural justice literature. Bies (2001) and Colquitt (2001) propose to recognize it as an independent dimension of fairness all together. The epistemological nature of our data, *i.e.* qualitative data, might not beyond all doubt confirm that interactional justice should be seen as a separate dimension from procedural justice, but our findings indicate that interactional justice was an important factor for satisfaction.

4.7.1. Appreciation of the interactions with the mediator

In contrast to the judicial authorities, mediators are seen as facilitators instead of as decision-makers. They facilitate a safe space for honest communication with the offender, offer practical and emotional support and prepare both the victims and the offender

intensely for the face-to-face meeting. Furthermore, the way they play this role is found to be important. Besides the compliance with procedural determinants such as respect, neutrality and trust, the mediators' attitude and personal approach were important.

As opposed to the criminal justice system, which was perceived as highly formal, ceremonious, depersonalized and bureaucratic, and as a result as complex and non-transparent, the restorative intervention was perceived as informal, transparent and apprehensible. The restorative procedure seemed highly personalized, and hence offered a relief from the bureaucracy and formality dominating the judicial proceedings. Eleven respondents describe how they had appreciated the mediator interacting with them in a professional but casual and convivial manner. The mediator came to their house, if needed, to talk to them, to explain the procedure and to prepare them for the eventual face-to-face with the offender. Also, the mediator facilitated a comfortable setting in which both victim and offender felt safe to talk about their emotions in a respectful manner. This contributed to the victims' appeasement.

> (Yann) '*Le tribunal, c'est très froid, c'est très impressionnant. Dans le cadre de médiation, on est dans une petite pièce avec un médiateur qui prend ni parti pour l'un ni pour l'autre (...). C'est beaucoup plus conviviale et ça permet de ..., le soulagement est plus grand*'.
>
> (Ginny) '*On s'est jamais allé dans un milieu carcéral (...). Les rencontres se sont faites au centre de justice réparatrice (...) et les six autres rencontres avec les détenus se sont déroulées là-bas. (...) Je sais pas comment j'aurais réagi dans un centre carcéral, j'ai jamais mis les pieds dans un centre carcéral. (...) Je peux juste te dire que là-bas, c'était quand même très doux comme cadre et comme endroit. Moins exigeant, je pense, émotivement*'.
>
> (Quinten) '*And I have to say, (the mediator) prepared everything very well, prepared me, and prepared (the offender), I think. And I had a very positive feel about it, and that feeling happened to be correct*'.
>
> (Translated by the author from Dutch: En ik moet eerlijk zeggen, (de bemiddelaar) heeft dat heel goed voorbereid en mij voorbereid en (de dader) voorbereid, denk ik. En ik had daar alle positieve gevoelens naar en zo is het geweest ook'.)

Furthermore, the mediator was obviously engaged on the matter and did not take it lightly. Convivial and personalized interaction does not imply that the service was unprofessional or less dignified.

> (Kirsten) '*Like, (the mediator), from the first moment (the mediator) contacted me, she felt very familiar to me. (…) I trusted (the mediator) already on the phone. Yes, really. That it was something serious, that it was not like he wanted to have a laugh, or something. No, it was serious*'.
>
> (Translated by the author from Dutch: '*Gelijk (de bemiddelaar) ook, van de eerste moment dat die (u contacteerde), zijt ge er al direct eigen mee, vind ik. (...) Ik vertrouwde die al aan de telefoon. Ja, echt. Dat het iets serieus was, dat het niet was voor 'daar ga ik eens mee lachen' of zo. Nee, het was serieus*').

The respondents could be themselves and did not feel reduced to the role of the victim or the aggrieved party in the judicial file. The face-to-face was a meeting between two people, connected to each other by a crime. One brought the pain and harm suffered to the table; the other got a chance to accept responsibility for the damage done. There were no judicial authorities present and the mediator kept aside and only played the role of the facilitator.

> (Irma, whose child was killed) '*Ça serait très rare que je suis la maman (…), j'avais rarement cette place là. Je serais toujours victime un peu, oui. C'est très frustrant parce que … . La seule fois où j'ai pu être maman, c'est quand j'ai demandé la médiation, que j'aie pu parler à (l'auteur). C'est la seule fois que j'étais vraiment la maman (…). Parce que j'ai pu parler sans intervenants, sans personne, et j'ai pu m'exprimer comme, je crois comme toutes les mamans auraient fait*'.
>
> (Rita) '*En fait, on s'est retrouvé face à deux humains, quoi. (…) Je crois que la médiation apporte un côté humanitaire, des deux côtés, enfin. Moi je l'ai vécu comme ça en tous cas, moi je l'ai vécu comme ça*'.

As a result, victims felt comfortable with the restorative procedure. Such familiarity was sometimes sought after. For instance, one of our respondents, who had been victimized by a

colleague, indicated that he wanted to deal with the events using the informal procedures he and his aggressor were most familiar with, *i.e.* the one facilitated by their employer. Because of its informality and familiarity the choice for this procedure would serve both parties, he argued. However, because his employer did not wish to or could not intervene, this respondent found himself forced to file a complaint against his aggressor at the police. He was glad that in the end, matters could be addressed and settled in a mediation procedure, possibly because of its resemblance to the informal procedure traditionally provided by his employer. Another respondent argued that the VOM procedure complied most with the principles he had been brought up with and, hence, was most compliant with his mindset. This particular aspect could refer to what in the literature on restorative justice is known as the self-selection bias.

> (Larry, who had been attacked by a colleague) '*Every week, we have (an after hours) drink (among colleagues). (...) That's where certain matters are arranged, that will otherwise go awry. (...) Things are settled during happy hour. (...) We also used to have a (service that dealt with complaints). (...) It allowed keeping conflicts in the "family". (...) But this was abolished (...) so now every complaint has to go to (...) court, and, of course, so far we have no idea of how things can go there*'.
>
> (Translated by the author from Dutch: '*Iedere (week) hebben wij drink (onder collega's). (...) Daar worden de zaakskes geregeld die ergens anders verkeerd lopen, of zo. (...) Dat wordt daar tussen pot en pint geregeld. (...) Vroeger bestond (ook een eigen orgaan dat klachten behandelde). (...) Dat bleef eigenlijk nog altijd in de "familie". (...) Maar nu, dat is afgeschaft (...) dus nu moet iedere klacht naar het (...)gerecht, en daar hebben wij natuurlijk helemaal tot nu toe geen kijk op hoe zo'n dinges aflopen*'.)
>
> (Bernard) '*Mon père (...) nous a éduqué sur un principe, un des principes de son éducation, et il nous le disait tout le temps : "Quand vous pouvez aider, faites-le. Quand vous pouvez rendre service, faites-le. (...)" Et ça j'ai respecté, ce principe, je n'ai jamais eu à le regretter. J'aide quand je peux, je rends service quand je peux. (...) J'ai accepté la médiation dans mon esprit*'.

Another sign of this sense of conviviality is the fact that different respondents (N=13), when reflecting on their experiences concerning the restorative intervention, consequently

refer to the mediator by using the mediator's first name. Half of our respondents (N=17) include a personalized assessment of their satisfaction with the mediator in the general assessment of the restorative intervention.

> (Jeanne) '*I take my hat off to (the mediator), really. A very nice person*'.
>
> (Translated by the author from Dutch: '*Chapeau voor (de bemiddelaar), echt waar. Een fijne persoon*.')

The interactions with judicial actors were also important for the respondents. They made a distinction between the favourability of the judicial procedures and the treatment by the judicial actors in the description of their experiences in the criminal justice system, and hence, between procedural justice and interactional justice. Several (N=5), for instance, indicated that they had much appreciated the contact with the judicial actors, while being very dissatisfied with the judicial proceedings. This led them to conclude that it was not the actors that had failed them, but the system had. Others (N=2) noted the disrespectful interactions with the judicial actors. Some respondents (N=3) valued the procedures as well as their dealings with the judicial actors. In a couple of interviews, the respondents evaluated their contact with the different actors separately, finding some to have been supportive, and others disrespectful. It was also suggested that the criminal justice is structurally disabled to allow interactions with the disputants because of their caseload, comparing it to assembly line work.

> (Catherine) '*I don't know how to describe it. It was the worst experience of my life other than the fact of the actual experience itself. I should say it was the second worst. And however, I did have a fantastic Crown Prosecutor. And he was just phenomenal. He was compassionate, caring, supportive, just all around. You know like the people in the system were fantastic, it was the system itself that failed me in my opinion*'.

4.7.2. Shaping realistic expectations for the restorative intervention

The interactions with the mediator were not only appreciated for their quality to put the victims at ease, but also served to help victim-participants (N=11) shape realistic expectations with regard to the restorative procedure and outcome, preventing disappointment. The extensive explanations and personal communication with the mediator prepared the victims for what to reasonably expect. Victims wanted to know what were the boundaries in order to form their expectations. Since they had never been in a similar situation, it was hard for them to know what normally happened in a restorative intervention and what outcome could realistically be expected. The mediator could help some of the respondents to moderate their expectations. Such realistic expectations did not only concern the actual course of the intervention, but also the attitude, ability and engagement of the offender within the intervention.

> (Olga) '*I wanted to know every last detail about (the day of the murder), exactly minute by minute. I wanted it to be like a movie. And then (the mediator) would tell me "you know, maybe (the offender) does not remember. (The offender) might have repressed it partially (…). He might have shut thinking about it down", (the mediator) told me, "it is possible that (the offender) has no meticulous memory of every detail", that is what she told me*'.
>
> (Translated by the author from Dutch: '*Van die (dag van moord) wou ik alles stuk per stuk weten, precies of dat minuut per minuut alles klopte. En ik wou dat gelijk een film. En dat (de bemiddelaar) dan ook zei 'ja, (de dader) weet het misschien niet (meer precies)'. (De dader) kan dat voor een stuk verdrongen hebben (...). Dat dat denken uitgeschakeld is, zei (de bemiddelaar), het is mogelijk dat (de dader) niet alles niet meer piekfijn wist, alle details, dat heeft ze mij gezegd*'.)
>
> (Alma, who met her offender twice) *'(La deuxième fois, l'auteur) avait montré aucune émotion comparé avec la première fois. Fait que même (le médiateur) s'en est rendu compte. (Le médiateur) (m')avait comme prévenu un peu avant. (…) Je pense que (le médiateur) voulait surtout m'aider là. Pis c'est là que (le médiateur) me dit qu'il fallait que je baisse mes attentes envers (l'auteur). (Le médiateur) voulait pas que je serais déçue encore là*'.

4.7.3. The importance of interaction for victim satisfaction

The quality of the interactions with the mediator mattered greatly for the respondents. These interactions can be situated on a very organic, interpersonal level. In this sense, the restorative approach offers a complete package of procedural fairness and interactional justice. We also found that interactional justice did not necessarily provide a buffer for procedural unfairness. Being aware of the risk for further confusing the different dimensions of justice (Folger, 1996) and the determinants defining what a fair procedure is, we find that a distinction between procedural justice and interactional justice might be valid and that this needs to be further investigated.

Furthermore, our observations regarding the creation of realistic expectations further mark the significance of interactional justice, specifically the idea of causal account described by Bies and Shapiro (1987). The causal account idea refers to the information disputants receive explaining how and why a certain unfavourable decision was taken to help soften the negative assessment of this outcome. While the causal account in its original conception concerns a retroactive explanation of a decision, our observations with regard to the creation of realistic expectations in the restorative approach prior to reaching an outcome, are related to having received insight into the potential outcome, *e.g.* based on what usually results from a restorative intervention or based on the motivation and attitude of the offender going into the meeting. We could call it a pre-established causal account.

In other words, during the preparation process, an integral part of the restorative intervention, victims are given information about the procedure and its general course, which allows participants to easily assess the intervention and its procedural aspects. It helps create a cognitive shortcut for procedural fairness judgements. In addition, information on usual outcomes and the motivations of the offender provided by the mediator allows developing another cognitive shortcut, about the potential outcome this

time. While the fair process effect is related to information on the *actual* restorative procedure valued by the victim (described in 4.6.4.), the causal account in the restorative approach is related to a proactive explanation of a *potential* outcome assessed by the mediator. The fair process effect is then completed with the proactive causal account idea. In both concepts, the central idea is that victim-participants are supported in making cognitive shortcuts to assess the fairness of the actual procedure and the potential outcome. In the restorative approach both of these can be formed as soon as entering the intervention.

Finally, interactional justice should not exclusively be responded to by restorative interventions. Judicial actors should be aware of the importance of the interactional dimension of justice as well. Interactional justice refers to a cultural dimension, and requires first and foremost a personal effort from the judicial actors. According to Sherman (2003) it is not unreasonable to request from judicial actors to leave room for interaction and emotions. It does not have to imply that judicial trials should be dominated by emotions, but that people should simply be allowed to express emotions, countering the fear of some scholars and judicial actors that this would defy all rational decision-making. Sherman refers to it is an emotionally intelligent justice. King (2008), along with Sherman (2003), suggests that restorative procedures correspond strongly with the emotionally intelligent justice concept. Nonetheless, judicial actors should be mindful of victim issues as well.

4.8. Restorative justice complies with procedural justice

Our findings correspond with the procedural justice framework, supporting the hypothesis that procedural justice offers a valid explanation for victim-participants' satisfaction with the restorative approach. The restorative approach seems particularly prone to meet the procedural justice standards.

The strongest indications for the relevance of the procedural justice theory to explain victim satisfaction with the restorative approach lie in the opportunity for victims to find voice (as a procedural factor) and in their search for recognition (as a justice motive). This is much in line with Van den Bos' observation that voice is the most consistent finding in procedural justice research and with studies highlighting the importance of recognition for victims (*e.g.* Wemmers, 1996; Wemmers & Cyr, 2005).

Respect was another important element in victim satisfaction with restorative justice. Victims, who felt treated with respect, felt validated. Other procedural determinants, such as neutrality and trust, also surfaced, but more implicitly.

Another interesting observation is the particular operationalization of the 'cushion of support' idea in the restorative approach. The favourability of the restorative procedure not only provides a buffer to the negative impact of an unfavourable outcome, but the unfavourable outcome is attributed entirely to the offender and his lack of effort, respect and engagement in the procedure. Its effect on the overall assessment of the intervention seems to be cushioned by the favourable treatment offered by the mediator as well as by the opportunity for voice.

The quality of the interactions with the mediator was also important. The interpersonal communication with the mediator was described as convivial and was a key part of victims' satisfaction. The interactions also served to shape realistic expectations regarding the procedure and the outcome. This corresponds with the causal account construct, which emphasizes the importance of accessible, complete information for procedural justice judgements.

However, not all respondents focused on procedural issues. For these respondents, the motivation to participate in the restorative intervention and their appreciation of the offer

seem to surpass the need for recognition, voice or other procedural factors. They liked the restorative offer because it allowed them to deal with the conflict in a private dialogue with the offender or because they had taken some altruistic motives to heart, two elements which are not accounted for by the procedural justice theory. These elements will be addressed in the following chapter, in which we tackle our second objective: describing the degree to which the restorative approach moves beyond the procedural justice framework.

5. The restorative approach extending beyond the procedural justice model

After having presented the potential explanatory value of the procedural justice model for victims' satisfaction with restorative justice, we will look into the possibility of the restorative approach exceeding the procedural justice model. As will be discussed in the following paragraphs, our findings suggest that there are additional explanatory factors for the victims' appreciation of the restorative practices studied that are unaccounted for and unexplained by the procedural justice model. These factors emerged from the semi-directive interviews; they had not been subjected to pre-established hypotheses. In this chapter we want to demonstrate that these factors contribute to violence victims' satisfaction with the restorative approach along with its procedural fairness.

Four themes emerged from the interviews that could not be explained by the procedural justice model. We labelled the first of these observations 'flexibility'. Respondents' experiences suggest that the restorative intervention is not just an informal, out-of-court procedure, but rather a flexible procedure, that can adapt to different needs and the victim's timing (5.1.). Secondly, the role of the mediator appeared to have been important. The mediator was seen as a resource person concerned with the victim's well-being (5.2.). The next PJ transcending observation concerns the bi-directional nature of interactions or the dialogue with the offender. In addition to the opportunity to participate in a conflict resolution process and express their concerns to the mediator and the offender, the respondents highly appreciated the opportunity for direct and unconditional two-way interaction in the restorative intervention. Such dialogue was an end in itself, rather than being a means to reach a decision (5.3.). Finally, the observations discussed in paragraph 5.4. are not related to procedural factors affecting satisfaction, but to justice motives (*i.e.* what explains people's preference for a certain dispute resolution procedure and its determinants). We found indications for altruism towards the society and towards the

offender. These were presented as an appreciated effect of participating, as an additional motive for participating in a restorative intervention or as the sole motive for meeting the offender. The procedural justice model does not account for such selfless motives in interpersonal conflicts.

5.1. Flexibility in the restorative intervention

There are different procedures to deal with conflicts and crime, of which the restorative procedure is one. What characterizes a restorative intervention is that it is bilateral and extrajudicial. In this regard, restorative justice is often described as informal justice (Mika, 1992; Braithwaite, 1999; Van Stokkom, 2002; Olson & Dzur, 2004; Woolford & Ratner, 2010). Informality is one of restorative justice's trademarks. However, the definition of informality remains rather vague; restorative justice scholars often neglect to define what informality is. For instance, Olson and Dzur's (2004) article, on the possibility and necessity for professionalism in the restorative approach despite its informal nature, does not include a definition of informality. They merely oppose restorative procedures to state-controlled procedures and refer to the minimized governmental role and the maximized involvement of the disputants and the community.

One of the objectives in procedural justice research has been to identify the types of procedures that are considered fair. Thibaut and Walker (1975, 1978) found that disputants tend to prefer bilateral conflict resolution procedures because the absence of a third party decision-making authority gives them maximum control, including both process and decision control. In other word, control rather than informality was deemed important for procedural justice judgements. Subsequent research continued to compare the potential fairness of different decision-making procedures, which were, for instance, distinguished by their level of informality. However, the notion of informality in the procedural justice

model is restricted to or confused with either simplified, court-annexed procedures or interpersonal justice. Procedural justice researchers refer to diversionary procedures, such as misdemeanour court, arbitration, out-of-court settlements, court-imposed alternatives to traditional litigation and plea-bargaining, as informal procedures. Restorative procedures have not been included. Tyler (2000a) highlighted that '*(i)n criminal cases, defendants rate plea bargaining to be fairer than a formal trial* (Tyler, 2000a, p.121)'. Here, informality is even limited to diversionary procedures that do not include victims. Often the offender is not directly involved in such procedures either, as Shapland observed (2000). Contrary to Tyler's (2000a) conclusion that also in civil cases out-of-court procedures are more satisfactory, Lind *et al.* (1989, 1990) found a preference for formal procedures in civil cases. Tort litigants perceived the out-of-court, diversionary settlements to be less transparent, comprehensible and dignifying than a civil trial. Lind *et al.* concluded that disputants want to feel comfortable but that this does not imply that they do not want formal procedures and that '*whatever procedure is used, formal or informal, it must be enacted well and seriously if it is to be viewed as fair* (Lind *et al.*, 1989, p.x)'. The fact that their respondents indicated that only their lawyers (not the disputants) were involved in the out-of-court procedures further indicates that these procedures also denied the disputants active involvement and voice. We agree that brief procedures such as court-annexed arbitration or out-of-court settlements, primarily developed or applied to reduce the court's caseload (Goldstein & Marcus, 1977), are not necessarily perceived as fair and compliant with the disputants' need for their case to be taken seriously. They do not qualify as restorative procedures either, despite them being labelled as informal (Braithwaite, 1999).

Our observations transcend the restricted definition of informality in the procedural justice literature and the vague operationalization of informality in the restorative justice literature. As indicated in paragraph 4.7., our respondents appreciated the restorative procedure for being convivial and personalized, which can be interpreted as informal, and distinguishes it from the judicial proceedings. This is an integral part of the interactional justice dimension

in the restorative approach. What is more, the restorative interventions were appreciated for being responsive to the victim's specific needs and timing. This adds up to the quality of the restorative approach of being flexible. It is not about the restorative procedure being bilateral and giving victims control, which is not what our respondents were looking for (see 4.3.4.), but rather the procedure being flexible. In addition to giving the victims process control, the restorative intervention enabled the victims to be involved at their own pace, at their own discretion and according to their own needs.

5.1.1. Responsiveness to the victim's timing

Our respondents appreciated being invited to participate in the restorative offer, even if they did not feel ready to accept the offer at the time of the invitation, either before or after adjudication. Victims appreciated the possibility to refuse and initiate it again later, if they changed their mind (see 4.3.2.). The fact that they were given the option to do VOM, FGC or VOE in itself strengthened their sense of control. In addition, they appreciated that they could decide if and when they wanted to exercise this control.

> (Yann) '*Il y a des moments plus opportuns que d'autres. Et ça varie selon les cas. Et c'est ça qui est bien de la médiation réparatrice, c'est que c'est quand on veut, où on veut. Et avec qui on veut*'.

Within the actual execution of the restorative intervention, after accepting the restorative offer, the victim's rhythm and timing were taken into account. Fourteen respondents highly appreciated this aspect. They were not forced to meet the offender or surrogate offenders if they did not feel ready to do so. They could let the preparation and shuttle mediation continue its course until they were ready to meet the offender. In certain cases, victims simply had to wait for the offender to agree to a face-to-face meeting (N=3), or for the

practical issues related to the facilitation of the face-to-face meetings to be settled (for the mediator to find a meeting room, for clearance from the prison warden, *etc.*) (N=1). However, in seven cases, the intervention had to be responsive to the respondents' perception of their ability to confront the offender and hear his side of the story. In one additional case, the respondent wanted to wait to meet the offender until the mediator was convinced that the offender was ready to accept responsibility. Also, she did not want to meet the offender on his territory and wanted to wait until he was released from prison. The restorative approach allowed the victims to determine when a meeting would be opportune and this was much appreciated.

> (Helga, was not subpoenaed in court and decided she would not attend the trial because she was not ready to hear the offender's side of the story) '*I don't think that I would have been ready for his story if I went to court and heard what… . If I had followed him through court and all that stuff, I don't honestly think that I was ready to hear that at that time. I needed to (mourn) the death of my little brother and it took me five years to do that. (…) It is about timing. (…) I wouldn't have been ready before the five years. So it is about timing*'.
>
> (Fiona) '*And my first priority was that I was not (meeting the offender) if they did not feel he had taken full responsibility. (…) And also, I would not do this on his turf. I would wait till he was out of jail*'.

Three respondents also highlight their appreciation for the possibility to postpone a planned meeting or opt out of the procedure altogether at any time, even right before or during the meeting with the offender. Despite the preparation, it was still nerve-racking to actually meet the offender. In one case, the face-to-face meeting was cancelled and postponed as soon as the offender arrived at the meeting, because the victim was emotionally unable to go through with the planned meeting. In another case, the option of postponement was offered, because the victim was nervous about the meeting, but she persisted. One respondent entirely terminated one of two FGC's he was involved in (one with each of both

offenders), because during the face-to-face meeting he noticed that the offender was obviously not willing to accept responsibility for the events.

> (Winona) '*J'étais super male au point de … j'ai cru que j'allais m'évanouir quand je l'ai vu derrière la porte. Là, j'ai cru que j'allais m'évanouir, et ils m'ont mis dans une pièce appart. Ils m'ont demandé si je voulais ne pas être assise avec (l'auteur). Et donc j'étais mise dans une pièce appart (et la rencontre a été annulée)*'.
>
> (Dana) '*And we were like ¾ away up the (driveway to the prison) and I said to (the mediator), "I'm not sure I want to do this", and he said "that is okay, that's fine. Shall I turn around? I'll just look for a place to do a U-turn. (…) If you don't want to do this, you can pull the plug anytime you want". (…) And he kept saying that all the way up*'.

The restorative intervention was found to be responsive to the victim's timing even to the extent that it allowed for a relative of the actual victim to represent the victim during the entire procedure or at a face-to-face meeting (N=2). In one case, the actual victims (a couple who had been attacked during a breaking and entering) could not even consider meeting with the offender, but were okay with their daughter doing it instead. In another case, the mediator allowed the husband of a victim to meet with the offender alone to test the water because his wife was not ready to meet the offender yet. A second face-to-face meeting took place in which his wife partook as well.

> (Rita) '*Mes parents ont dit non, ils n'ont rien à entendre de cet homme là. Et moi j'ai dit (à ma mère), "mais moi je voudrais bien que tu y ailles". Elle me dit "pourquoi ?", j'ai dit "c'est le seule moyen qu'on a de savoir qui c'est vraiment passé". Alors, elle me dit "ben, ça va, toi vas-y"*".
>
> (Jeanne's husband) '*Actually, the first confrontation (with the offender), the first time I went there alone. Because I had the feeling (my wife) was not ready for it*'.
>
> (Translated by the author from Dutch: 'Eigenlijk, de confrontatie (met de dader), die eerste keer heb ik dan gedaan. Omdat ik haar daar toen nog niet klaar voor (vond))'.

5.1.2. Multiple purposes served

Another dimension of the flexibility of the restorative approach that emerged from our data is that it can serve multiple purposes. The restorative intervention was flexible enough to adapt to the specific need(s) victims might have. While certain respondents specifically sought to understand the offender's motives, others rather wanted to use the face-to-face with the offender to express their anger. Some accepted the restorative offer because they hoped it would help them heal and move on; others were not looking for tools to heal but for ways to be involved. Or, when for some victims the restorative intervention served to raise the offender's victim awareness and even encourage him to get his life together, for others it did not really matter how it affected the offender, as long as they had the chance to express themselves and hold the offender accountable. And one respondent in particular used the restorative intervention because it was more practical than having to go to court. The restorative intervention can almost be whatever the victims want it to be, as long as it remains within the boundaries of common decency and deontological rules. The offender can evidently neither be used as a punching bag nor be verbally abused by the victim, but the space created by the restorative intervention can be used to vent frustrations and emotions, get the much needed answers to very specific and personal questions, and ensure that the offender fully understands what the consequences of the victimization are.

> (Zara) '*I know money is very important to (the offender), that it was the only way to get back at him, that I could hurt him by asking for money. (…) Because I feel that would be his penance. (…) Some of my family members, not me, my family members, they were actually looking for words of regret. (…) Not me. I did not want him to regret (…), I could not live with that. Even if he would have shown regret, that did not do anything to me. (…) I have a sister and, I wasn't aware but, she told me afterwards, she met (the offender) face-to-face in prison. She did that as some sort of step in her recovery. (…) I respect that she did it (…). But I was not interested in it*.'
>
> (Translated by the author from Dutch: '*Ik weet dat voor hem geld heel belangrijk is, dat het eigenlijk de enige manier is dat ik hem kon pakken, dat ik hem kon kwetsen. (...) Omdat ik*

> *vind dat dat zijn boete is. (...) Sommigen van de familie, ik niet, familieleden, die wouden eigenlijk woorden van spijt. (...) Ik niet. Ik wou niet dat hij spijt (...), ik kon daar niet mee leven. Zelfs als hij spijt betoonde, mij deed dat niks. (...) Ik heb een zus en, ik wist dat niet maar, ze heeft dat dan verteld achteraf, die heeft nog persoonlijk bij hem in de gevangenis geweest. En dat was (...) eigenlijk voor een verwerking voor haar. (...) Ik respecteer dat zij het wel gedaan hebben (...). Maar van mij hoefde het niet*').

Respondents often had multiple motivations for participating in a restorative intervention. Moreover, when different needs occurred at different moments, *e.g.* when new questions arose after the first face-to-face meeting, it was possible to request for another meeting (N=6; in three cases a second meeting had already taken place). This aspect certainly adds to the flexible nature of the restorative offer.

> (Dana) '*I never had the right to my feelings and going through what I went through (in the face-to-face with the offender), a year and a half later, I actually, (…) had a right to my feelings and I was really angry about what (the offender) had done to me. And I needed… I went to (the mediator) and I said that I really needed to get that anger of my chest and I needed to have a safe place (again) where I could actually be mad at (the offender) and tell him off*'.

Even in cases where strong emotions, such as anger and sadness, were at stake, the restorative intervention still served a clear purpose, as an opportunity to express this anger and sadness towards the offender and, as a result, find closure. The expression of these emotions was found to be quite satisfactory in itself, according to seventeen respondents. There has been some discussion in the field whether or not restorative services should be offered to victims who have not entirely dealt with the emotional impact of the crime yet, or who might still be traumatized by the events (Van Camp, 2010). We found that even in such cases where emotions still run high, the confrontation with the offender can be useful, specifically in venting these emotions. It can consequently be a step towards healing. The expression of such strong, possibly debilitating emotions, can in fact be the exact purpose served by the restorative intervention.

> Vanessa's expectations with regard to the face-to-face meeting with the offender were very clear and basic: she needed to voice her anger towards him and wanted him to tell her why he had done it. She felt very frustrated with the lack of involvement in the criminal justice proceedings, but seemed to be even more frustrated with the fact that the offender had refused to admit his role in the events, and even tried to shift the blame on others. The attitude of the offender, his insistent denial of responsibility, and the fact that he did not realize the extent of the consequences of the crime, absorbed her and her anger was only addressed at the offender: *'(For the duration of the face-to-face) I tolerated him to be in the same room with me. I also said that it was something I will not gladly do again. (…) But I know I had to, when dealing with important issues, you have to settle them among yourselves, you don't have a choice, you just have to. You have to show the strength to do so. (…) He was the only person who could answer my questions. (…) I'm not going to say that it changed my world, but it helped me get rid of some of my frustrations. (…) At that moment, I could, for an instant, be furious in a civilized manner. (…) (VOM) did not turn my world around, but it helped me lose some of my frustrations. (…) (After VOM) you feel a bit stronger because I realized that I stood eye-to-eye with him, I told him my opinion, I vented my thoughts*'.
>
> (Translated by the author from Dutch: *Ik heb die toen (tijdens face-to-face) getolereerd voor een dag in mijn buurt en in dezelfde ruimte. Maar ik heb dat ook gezegd, dat is iets wat ik dus niet graag niet meer ga doen. (...) En ik weet ik moet dat doen als dat iets is van belangrijke zaken, die ge onder elkaar moet regelen, ge kunt niet anders, ge moet wel. Ge moet de kracht daarvoor kunnen tonen. (...) Hij was de enige persoon waar ik met mijn vragen bij terecht kon. (...) Ik zeg niet het heeft mijn wereld veranderd, maar het heeft toch een deel van mij geholpen om eens mijn frustratie kwijt te geraken. (...) (Toen kon) ik efkes een keer mijn woede loslaten op een fatsoenlijke manier. (…) Ik zeg niet (VOM) heeft mijn wereld veranderd, maar het heeft toch een deel van mij geholpen om eens mijn frustratie kwijt te geraken. (...) En (na VOM) voelt ge vind ik, allé, ik voel me daar iets sterker in omdat ik gewoon in mijn eigen dacht van kijk ik heb oog in oog gestaan, ik heb mijn mening gezegd, ik heb hem goed mijn gedacht eens gezegd*'.)

Furthermore, the responsiveness of the restorative approach to the victims' needs is related to the expectation of resolving the underlying issues of the conflict, instead of only focussing on the damages done. Fifteen respondents pointed out that they appreciated that the restorative intervention allowed issues of a more informal nature to be resolved outside the courtroom. These issues could not be addressed and resolved in the formal framework of the judicial proceedings. Specifically, the respondents who participated in VOM before

judicial adjudication appreciated the opportunity to clear the air between the disputants and to defuse the situation before actually going to court (see 6.1.1.2.).

Initially, three respondents did not want to file a complaint and formalize the incident. They did not want to have judicial services involved to resolve the conflict and consequently to formalize it. This might explain why they accepted to partake in the restorative intervention as well as their satisfaction with it. In these three cases the VOM took place before adjudication. One of these respondents, who had been threatened with a weapon by a former friend, did not find the incident important enough to file a complaint, but others called the police to the scene. He participated in VOM hoping that this would result in the exemption of punishment for the offender. One respondent, who had been assaulted by a stranger, only filed a complaint because others had insisted she should. In one other case, the respondent, who had been attacked by a former friend, only disclosed the events to the police to protect herself from the offender, neither realizing nor wishing for the offender to be prosecuted. These respondents were relieved matters could be settled in the informal procedure of the restorative intervention (or that at least an attempt was made to settle) before going to court.

> (Herman) '*Should it have been really abnormal …, but for … - well, it's not exactly a futility either, but – it doesn't have to go so far as to attach heavy consequences to it*'.
>
> (Translated by the author from Dutch: '*Als het nu echt abnormaal is …, maar voor … - een futiliteit is het wel niet, maar - het hoeft allemaal niet zo ver te komen dat daar zware gevolgen aan gegeven worden*'.)

> (Kirsten) '*And when I got back here and the neighbours said to me "you have to file a complaint at the police. If this goes unreported, he'll keep firing his gun at people". So I called the police*'.
>
> (Translated by the author from Dutch: '*En toen kwam ik hier terug en hier de buren hier en die zei ook tegen mij "dat moet ge aangeven aan de politie hé. Als dat niemand aangeeft, blijft er die op los schieten hé". (Ik heb dan) de politie toch (maar) gebeld*'.)

> (Winona) '*En allant porter plainte, je ne pensais même pas que ça allait aller au tribunal. Je pensais que (l'auteur) allait être interpellé, et puis qu'on allait lui demander un peu de se calmer. Mais je ne savais pas que ça allait être envoyé au parquet et puis prendre une telle ampleur. Donc, moi quand j'allais porter plainte, c'était plutôt pour me protéger au cas où (l'auteur) reviendrait, tellement j'avais peur*'.

Also, there were no formal consequences attached to whatever course the restorative procedure and outcome took. Whether or not the restorative intervention resulted in an agreement or whether it was aborted, there were no judicial consequences, neither for the victim nor for the offender. Hence, there was no outcome-pressure, adding to the perceived flexibility of the procedure. Even if a written or oral agreement was not reached, the intervention was not necessarily considered a failure or unfair. Whether or not the offender recognized his responsibility in the events, it would not affect the eventual penal adjudication either. Consequently, it encouraged the offender to be honest and respond sincerely to the victims' questions. It also relieved the victims from the burden of decision control.

> (Frankie) '*Je voulais lui rencontrer pour lui faire dire la vérité sans avocat, sans juge, rien que lui, moi et le médiateur*'.

5.1.3. Discussion

Our observations concur with the suggestion that victim recovery is highly individual. It is impossible to predict which victim will suffer what kind of consequences and to what degree, as a multitude of factors affect the reaction of an individual to harmful circumstances (Shapland & Hall, 2007). The seriousness of the events is not necessarily a good predictor for the seriousness of the emotional and psychological consequences for victims. Even in our sample of victims of violent crimes, trauma or emotional problems

were not always at stake, as far as the respondents revealed. But if respondents were struggling with emotional and psychological issues resulting from the victimization, the restorative approach had the capacity to stretch and fit such specific needs. In other words, regardless of the need for healing, VOM, VOE and FGC seem to be elastic in nature. Within the boundaries of the deontological code of the intervention, the participants dictated its particularities.

> (Ginny, who participated in a VOE with three other sexual assault victims) '*Personne n'était au même niveau, pis c'est bien correct parce que chacun apportait sa couleur, son essence, … . Et c'est ce qui fait que ça a une saveur très particulière*'.

The restorative offer presents itself as incredibly flexible by being able to respond to the victims' timing and specific needs. As Shapland *et al.* (2006) demonstrated: each participant brings his ideas of justice to the table, hence, reshaping the intervention within its procedural framework. In other words, the clients reinvent the restorative intervention in which they participate. Furthermore, Shapland *et al.* (2006) found that participants' justice ideas are based on personal normative values, not on the codified criminal justice ones, emphasizing procedural justice, symbolic reparation and the offender's rehabilitation.

> '*The result of there being a different set of participants engaging in each restorative justice event could theoretically be an infinitely variable process and set of outcomes. Yet, when restorative justice occurs within criminal justice (…) the extent of democratic unpredictability is constrained—not by the state or the national criminal law in any top–down way, but by participants' normative ideas about justice which they bring to the restorative justice event and which shape both the process and the resulting outcomes* (Shapland *et al.*, 2006, p.507).'

The flexibility of the restorative approach moves beyond the procedural justice model. While the procedural justice model accounts for participation and input, it does not cover

such flexibility as attributed to restorative interventions. The procedural justice model predicts fairness of standardized procedures and procedures that follow a prescribed execution, equal in different cases, and are presided by an authority. The restorative approach differs because of the possibility to let individual disputants steer the interventions, without endangering the opposing disputants' rights, as well as to adapt the procedure to their timing and needs. Victims did not only feel involved and in control, they felt the procedure could adapt itself to accommodate their specific expectations and needs.

Respondents referred to the informal character of both the restorative procedure and outcome. They appreciated the conviviality in the execution of the procedure and the comfortable and safe setting of the face-to-face meetings with the offender(s). That is not to say that there were not any rules to follow; however, these rules could be applied in a flexible, victim-responsive manner, which allowed a high degree of comfort and familiarity. They also appreciated the opportunity to deal with more personal issues in the restorative intervention. As such, the restorative approach transcends the mere focus on the conflict and victimizing events, also to address the underlying issues and emotions. The restorative approach is not only about repairing the damages; it is also about defusing the situation.

Finally, flexibility is reflected in the absence of formal consequences attached to any possible outcome of the restorative intervention. In other words, the victims appreciated the fact that they were free from responsibility for the outcome or decision-control. Moreover, a formal answer from the criminal justice system was also sought after, regardless of the favourability of the restorative intervention's course and outcome. The flexibility of the restorative approach is therefore also related to its complementary nature (see also 6.2.1.).

5.2. Caring for victims

As we have described before, preparation is an integral part of restorative interventions. It serves informational and cognitive purposes, *i.e.* providing participants with information about the procedure and what to expect, which allows them to assess the situation (see 4.6.3.). But as we will demonstrate, it also addressed emotional needs. In this regard, the role of the mediator was found to be important. Again, the restorative approach seems to add a unique layer to the mere compliance with procedural fairness. It moves beyond the informational justice dimension, integrated in the interactional justice dimension, to providing care. Consequently, the restorative approach is not just a decision-making or dispute resolution process; it is also a source for support and empowerment.

> (Fiona) '*I think it's so important that the mediator, the amount of time that they spend with the victim, that is so* key'.

5.2.1. Preparation for the confrontation with the offender

The mediator not only supplied the victim-participants with information about the procedure, the potential outcomes and the attitude and motivations of the offender for the face-to-face meeting, there was also attention for the moral and emotional preparation of the victim.

Nine respondents remark that the mediator helped them to clarify what exactly they wanted from the restorative intervention. This in turn allowed for the mediator to refer to these motivations when communicating with the offender in the preparatory shuttle mediation phase. Moreover, as one respondent mentions, the mediator explained that it is not

uncommon to want to meet her offender, assuring her that what she was looking for was not abnormal.

> (Fiona) '*And (the mediator) does such a good job of not rushing into it, taking a long time, going over and over and over with you what you need from this experience*'.
>
> (Alma) '*(Le médiateur) te pose des questions : pourquoi tu veux voir (l'auteur)? Il veut être vraiment sûr qu'on s'en va là pour la bonne raison, pas pour une mauvaise raison. Tsé, lui il veut pas arriver là et qu'il y ait de la chicane. (…) Il m'a expliqué que j'étais pas la seule à vouloir aller voir mon agresseur. Que c'est arriver déjà plusieurs fois, que j'étais pas la seule là-dedans. Qu'il y en a qui ont besoin d'y aller*'.
>
> (Helga) '*(The mediators) weren't afraid to challenge some of the stuff that I was saying, but they did it in a gentle way and I really, really appreciated that because it made me think about what I really wanted*'.

More specifically, the mediator's help in formulating questions intended for the offender or the surrogate offenders was much appreciated (N=9). Because of the emotions hiding behind the questions, it was not always easy to formulate them correctly or respectfully. It also allowed for the offender to prepare his answers. In other words, the preparation of questions and answers formed a framework for the actual face-to-face meeting between the victim and the offender and took away some of the stress for both parties during the meeting.

> (Greta) '*It was determined prior to the meeting what was going to be said, for me as well as for him, and I preferred that*'.
>
> (Translated by the author from Dutch: '*Het was op voorhand al een beetje bepaald wat er gezegd ging worden, zowel bij hem als bij mij, en dat vond ik veel beter*'.)
>
> (Vanessa) *'(The mediators) asked me before the meeting to give them the questions I wanted answered, and they sent these to (the offender). For them to be able to contact him and say "these questions will definitely be addressed, so if you want to answer these questions, that would be good. If*

> *you don't want to answer, that is fine as well, but these questions will be asked, so you might want to prepare for them"*".
>
> (Translated by the author from Dutch: '*Ik had op voorhand al een paar keer van (de bemiddelingsdienst) gevraagd (geweest) van de vragen die ik dan moest hebben, waar ik een antwoord op wou hebben, al doorgestuurd naar hem. Dat zij dan contact opnamen met hem om te zeggen "die vragen komen zowiezo aan bod, dus wilt ge op die vragen (antwoorden), is het goed. Wilt ge die niet beantwoorden, ook goed, maar die vragen gaan aan bod komen, dus ge kunt u daarop misschien dan al op voorbereiden"*.'
>
> (Alma) '*(Le médiateur) veut vraiment savoir toutes les questions. (…) On a tout checké les questions, les questions. Que je formule les questions comme il faut. Pour pas que ça (…) soulève un malentendu et qu'il aimerait que le chicane poigne civile, c'est pour ça. (…) Il nous aidait pour les questions, autant (l'auteur) que pour moi*'.

Three respondents recall that they continued to self-prepare for the meeting with the offender or surrogate offenders by preparing notes, which they intended to use during the meeting as a mental support tool. One respondent had been carrying a notebook in her purse to write down new questions. Another had written down her story to make sure she would not forget any details of the impact of the crime she wanted to describe to the surrogate offenders in the VOE. After the meeting, she realized that she had not even glanced at her notes, because, as she stated, telling the truth comes naturally.

> (Annette) '*J'avais pris des notes, oké. (…) Je les avais apporté (au rendez-vous avec les prisonniers). Je les ai mis sur moi… et pas une fois je regardais mes notes. Parce que moi je me disais je m'en vais là pour raconter la vérité et quand tu racontes la vérité tu ne peux pas te tromper. (…) Je pense que je les ai regardé une fois ou deux pour être sûre que je n'avais pas oublié des choses. (…) Je regardais et j'avais rien oublié. (…) J'ai dit, quand tu racontes la vérité, tu ne peux pas te tromper*'.

The preparatory meetings with the mediator were used to clarify one's needs and to formulate the specific questions for the offender. Three respondents mention that these meetings also served the mediator in making sure the victim was ready to meet the

offender. Although the decision to meet the offender face-to-face was ultimately for the victim to make, the respondents felt the mediator would also make sure to check whether they and the offender were indeed ready to be confronted with each other. This might chisel away somewhat on their sense of process control, but the respondents in question were not bothered by it. In any case, it did not affect their satisfaction with the mediator. It might have put them at ease to see that the mediator wanted to assure that they were ready for the confrontation.

> (Frankie) '*J'ai rencontré plusieurs fois le médiateur avant de dire "bon vous pouvez le faire, ça ne va pas créer une psychose". Ça était préparé hein*'.
>
> (Greta) '*(The preparation took) until (the mediator) must have seen that all would go well when going there*'.
>
> (Translated by the author from Dutch: '(De voorbereiding duurde) tot (de bemiddelaar) waarschijnlijk zag dat het ging gaan van daarnaartoe te gaan'.)

At times the preparatory process was very long. The length of the preparatory process varies greatly, from only a couple of weeks to over a year. This indicates that a long preparation is not always needed, not even in such violent cases such as those we have studied. This is also in line with our observations regarding the restorative offer's flexibility and responsiveness for the individual victim-participants rhythm and needs. In one specific case, however, the reason for a brief preparation process was of a more practical nature. There was simply little time for the victim and the offender to prepare for their meeting, since the offender was going to be moved to a facility in another country.

> (Alma, victim of incest) '*Avant que moi je rencontre (l'auteur), ça a pris quasiment un an, si c'est pas un an et demi, avant que je le voie. (Le médiateur) prépare vraiment. Il s'assure vraiment que t'es prête avant d'y aller (Quand il sent) que t'es pas prête, il t'amène pas (au rencontre avec l'auteur). (...) Mais des fois c'est long. (...) Et là, il te redemande pourquoi tu veux le voir. C'est long (elle rit). C'est long mais ça vaut la peine*'.

> (Catherine, victim of incest) '*I'm sure it was a couple of weeks. It did not take long at all. I was actually (…) alarmed at how fast it moved, like, I was surprised. It might have taken longer but to me it only felt like a couple of days*'.

Nonetheless, despite the preparation, sixteen respondents indicate that they still felt immensely nervous about actually meeting the offender. But they persisted because they expected the meeting with the offender to be an important step.

> (Ines) '*Si tu peux pas regarder la souffrance en face, moi je demeure convaincue que tu n'irais pas plus loin. Dans la vie, il faut oser, il faut risquer, il faut agir sur des choses pour pouvoir transcender*'.
>
> (Irma) '*Quand j'ai rencontré (l'auteur), c'était un moment très dur, mais très constructif pour moi. (…) J'étais très stressée. J'avais copié 3 pages, je dis "qu'est-ce que je vais dire? ". Je voulais faire la démarche mais d'y être vous avez encore un pas à faire à plus. Mais (l'auteur) est arrivé et directement je savais parler*'.
>
> (Ginny, about the week leading up to the first of her VOE meetings) '*C'est une semaine très, très bouleversante à quelque part parce que tu dis "eh, dans quoi je me suis embarquée ?". Il y a comme un peu d'hésitations, "comment je vais être quand je vais les rencontrer?". Ça vient comme mijoter dans nous*'.

5.2.2. Emotional support from the mediator

Other than the mediator mentally preparing the participants for the face-to-face meeting with the offender, which helped them to feel comfortable, fifteen respondents brought up the importance of the general emotional support offered by the mediator, unrelated to the communication with the offender. Note that the VISA program is integrated in a victim support service and that the VISA respondents (N=4) were continuously guided by their caseworker before, during and after the VOE. But also VOM respondents (N=11) highlight

the importance of the mediators' general emotional support, before, during and after the face-to-face meeting. The mediators' support was reassuring. The mediators are described as compassionate and caring. Not all our respondents had other sources for emotional support, be it professional or from friends and relatives, making the support and understanding offered by the mediator all the more valuable.

> (Olga) '*Leading up to (the face-to-face meeting), the mediator visited me twice because… for me, it was really not that easy (to meet the offender). I was kind of afraid of it (of the confrontation with the offender). (…) But with (the mediator) present, I felt more at ease*'.
>
> (Translated by the author from Dutch: 'In de aanloop (van het gezamelijk gesprek) is (de bemiddelaar) toch twee keer bij mij gekomen omdat … voor mij was dat gelijk niet zo gemakkelijk. Ik was daar een beetje bang van (van de confrontatie met de dader). (...) Maar nu met (de bemiddelaar) daarbij, ge zijt meer op uw gemak'.)
>
> (Ines) '*Dans une période, peut-être, de tension, les premières fois où tu décides de t'ouvrir à d'autres personnes, le fait que ça soit encadré c'est pas trop menaçant*'.
>
> (Alma) '*Une semaine après (le médiateur) m'a rappelé pour savoir comment j'allais encore. Et si j'allais bien. (…) Il m'apaise*'.

Some (N=6) even referred to a good rapport with the mediator, implying that they felt very comfortable with the mediator. Such affinity might have been helpful to open up and recount the emotional consequences of the harmful events as well as take away the anxiety about the confrontation with the offender. Moreover, several respondents (N=6) are still in touch with the mediator or have become affiliated with the mediation service.

> (Vanessa) '*Actually, the most important thing is to be able to bond, and (the mediators) try to do that. And they try to invest time to listen. And sometimes you just need someone to listen*'.
>
> (Translated by the author from Dutch: '*Eigenlijk nog het belangrijkste dat ge die band kunnen maken en dat proberen (de bemiddelaars) wel heel goed. En ze proberen ook altijd hun tijd erin te steken om te luisteren. En soms hebt ge gewoon eens ne keer een oor nodig voor te luisteren*'.)

> (Catherine) '*The moment I met (the mediator), I just bonded with him, he bonded with me (…) There was never any question in my mind that it was the thing to do. (…) I never ever questioned or feared for anything. Because I just felt that (the mediator) was there for me. And he just guided me through it to the point where I never (…) felt uneasy, I never felt fear*'.

5.2.3. Discussion

As already observed by Umbreit *et al.* (2006a), it is possible to distinguish between the impact of the communication with the offender and the significance of the mediator on the satisfaction of victim-participants with restorative interventions. This significance is related to the mediator being seen as a resource person and to the restorative intervention being more than a conflict resolution procedure.

First of all, mediators are seen as facilitators, rather than as authorities. They facilitate a safe space for the victim and offender to communicate and prepare both parties, intellectually and mentally, for the face-to-face meeting. During the meeting, they are present but do not dominate the meeting and support the participants whenever needed (Olson & Dzur, 2004). This distinguishes them from judicial actors, such as policemen, prosecutors and judges: they are not regarded as decision-makers. In procedural justice studies, even those focussing on out-of-court and other so-called informal procedures, researchers are looking at the role of authorities, be it judicial authorities, police officers or employers (see for instance Lissak and Sheppard (1983), who investigated the range of disputes for which subjects indicated procedural concerns, such as police encounters and disputes in the work environment). These procedures still include an authority that is willing to temporarily release or take a distance from their decision-making power in what is considered to be an informal format by the procedural justice scholars. But an authority is

still present, as opposed to the mediator in a restorative intervention who is perceived as a facilitator and does not have any decision-making power.

Moreover, the respondents appreciated the mediator for being compassionate and supportive. They did not confuse the mediator with a psychosocial support worker; they were well aware of the objectives of the restorative intervention and the role of the mediator. But they indicated that the mediator was available to listen to them, acknowledge their grievances, and support them. If needed, the mediator referred the victims to victim support services for psychosocial support. The respondents appreciated the mediator for his support. As such the restorative approach transcends the procedural justice model that focuses on the decision-making process and neglects the supporting activities surrounding it. Restorative interventions and the support of the mediator are not only about resolving the conflict but also about care for the disputants involved. Even though Tyler and Folger's (1980) findings show that fairness also matters in non-conflict related encounters with the police, it does not comply with our findings that the restorative approach extends beyond the focus on conflict-resolution. The encounters Tyler and Folger investigated were related to informal needs in non-conflict situations. The encounters we studied between victims and mediators did take place in conflict situations; it is the interactions that surpassed the focus on the conflict.

The restorative approach does not monopolize the care for victims within the criminal justice system. For instance, parallel to having been involved in the restorative intervention, eleven respondents made use of the victim support services affiliated to the courts, and much appreciated their supportive, friendly, informal and informative approach. In Quebec, such services are provided by the *Centre d'Aide aux Victimes d'Actes Criminels* (CAVAC), who offer to accompany victims throughout the judicial proceedings. Also in British Columbia and Alberta, there are Victim Support Workers offering services such as court orientation, preparation and accompaniment. In Belgium, a specialized victim service has

been installed in every courthouse (called '*services d'accueil aux victimes*') offering victims information about the judicial procedures, referrals to other services, accompaniment during the trial and support for those victims who wish to read the judicial file before the start of the trial, which is available as soon as the judicial investigation is terminated. These victim services do not represent the decision-makers, even though they are affiliated to the judicial services. They can operate in a more informal and convivial fashion within the judicial framework.

> (Petra) '*One of both was always present (during the trial), either (the assistant from victim support) or (the assistant from the 'service d'accueil aux victimes'). But that was good because, what you go through during the trial, you can immediately talk about it with them. That is very important*'.
>
> (Translated by the author from Dutch: '*Het was ook altijd één van de twee aanwezig (op het proces), ofwel (de assistent van slachtofferhulp) ofwel (de assistent van slachtofferonthaal). Maar dat was ook goed omdat ge tijdens het proces wat dat je meemaakt dat je dat tussentijds ook kunt ventileren naar hen toe. Dat is heel belangrijk.*')
>
> (Dana) '*A big part of it were victim services. Were very helpful, they explained, they were able to prepare me for court and explain what would happen in court and I thought that to be very helpful. (…) (During the trial) I didn't end up sitting in the hallway and I only encountered (the offender) once. We walked by each other, so … . They were able to give us a room to sit in. (…) I was able to be safe and wait. That was being taken care of by the victim services*'.

5.3. Victims looking for a dialogue

The next PJ transcending observation is related to the importance of dialogue. Our findings indicate that victims were not only looking to express their concerns, to ask questions, and to be heard. They were also looking for interaction.

Traditionally the procedural determinant 'voice' has been conceptualized as unidirectional. Folger (1977, 1996), the scholar who renamed Thibaut and Walker's process control into voice and is an authority on voice research, operationalizes voice as the opportunity to make a statement and express one's opinion about what a fair outcome would be to a decision-maker (Folger, 1977, 1996) and to present evidence supporting one's case (Folger *et al.*, 1979). '*Voice means having some form of participation in decision making by expressing one's own opinion* (Folger, 1977, p.109)'. Other researchers, such as Van den Bos, abide by this conceptualization of voice, distinguishing voice procedures from no-voice procedures by the presence or absence of the opportunity to present one's opinion about the eventual decision (Van den Bos, 1996).

This unidirectional conceptualization of voice in procedural justice does not cover the significance of an immediate reaction to one's voice, other than it being reflected in the eventual decision. The procedural determinant 'voice' does not cover the quality of restorative interventions of facilitating a dialogue. Not only did victims want to express their concerns and ask questions, they wanted immediate answers and to be able to discuss them. In this sense, dialogue is dynamic, because it is bi-directional, as opposed to the static notion of voice in the procedural justice model.

5.3.1. Dialogue versus expression in court

Victims are given the opportunity to voice their concerns in an oral testimony (*e.g.* in the form of a character witness for the deceased direct victim) or a Victim Impact Statement (VIS) in the court and at the parole board. A number of respondents (N=12) have already used this option. For all but one of these twelve respondents, although they appreciated the opportunity to express themselves before the court and being heard by the judicial authorities, either before or after adjudication, it did not compare to the opportunity to communicate directly with the offender. The opportunity to express their concerns in court or at the parole board did not replace the need to talk to the offender, regardless of how satisfactory voice was represented in the criminal justice system. It simply lacked the dynamic these victims were looking for, *i.e.* a dialogue with the offender in a safe, prepared and private context. The chance for voice towards judicial actors felt good and was unburdening but did not replace or fulfil the need to express oneself directly towards the offender and have the offender respond, an opportunity only available in the restorative offer.

> (Erin) '*It is so frustrating because you can't say a word (in court), other than if you like wrote a letter, then you get to read it. But (…) I don't think it makes much difference really doing that. (…) We get voice, but we don't get an answer, you know. We could only voice what we said, like when I did my statement or my letter, those things, I just said it. And they need it three months ahead, and I can't say a word about it. The girl reads it for me. Your hands are tied, you know. (…) You still feel better opening up and reading it. But then again why isn't it to (the offender's) face? Why are they always protecting (the offenders) in that respect, you know what I mean? Here I am talking to these three judges (…) on the (parole) board, and it would be much more meaningful to both if you (could directly address the offender)*'.
>
> (Fiona) '*After we went to his parole hearing I decided that every time I had heard (the offender) speak, every time, that was always in the presence of a court room, in jail at the parole hearing, lawyers, defence attorneys,*

> *prosecutors, police, guards, … . I had never really been able to feel, you know, to get a good grip of what he was saying*'.

As offenders and aggrieved parties are separated in the courtroom, interpersonal contact with the offender is inhibited in the framework of the judicial proceedings. Three respondents (each of which partook in a VOM after adjudication) note that they had been waiting in the same room with the offender and/or his relatives during trial breaks. The atmosphere had been tense and the confrontation unprepared, which prevented them from having a calm conversation. Seeing and speaking with the offender outside of the courthouse, having been prepared by the mediator, allowed for more private and intimate communication.

5.3.2. Getting answers

Twenty-eight respondents mention that the restorative intervention enabled both the offender and the victim to respond to one another's remarks and questions immediately and continuously. The respondents generally had very specific and personal questions, which they preferred to present directly to the offender. As a matter of fact, only the offender knew the answer to these questions. The judicial file or trial could not or did not offer the same insight as the direct communication with the offender on these matters.

> (Olga) '*Yes, (I had) difficult questions. Very emotional questions as well. About how (the offender) for instance experiences prison. (…) But also about the day it happened and about the months leading up to it. Those were the most difficult questions. Thanks to the mediation I was able to ask these questions*'.
>
> (Translated by the author from Dutch: '*Ja, (ik had) moeilijke vragen. Zeer emotionele vragen ook. Dan van ná de feiten hoe (de dader) bijvoorbeeld de gevangenis ervaren heeft (...). Maar ik zo van die dag zelf en daarvoor die maanden. Dat was voor mij het moeilijkst om te vragen. Dankzij herstelbemiddeling heb ik ook dat kunnen doen*'.

> (Irma, who had heard during the trial that the offender, after having killed her child, had just gone home as if nothing had happened) '*Comment, ce jour là, est-ce que t'as pu jouer avec ton playstation et t'as pu manger avec tout ce qui était passé?*'.
>
> (Eve) '*I had my ideas about what had happened, and I wanted to know whether these ideas were correct. And only he could tell me*'.
>
> (Translated by the author from Dutch: '*Ik had zo mijn ideeën en ik wilde weten of mijn idee juist was. En alleen hij kon daarop antwoorden*'.)
>
> (Frankie, who was stabbed with a knife in her stomach by a man who tried to steal her handbag) '*Justement parce qu'au tribunal son avocat avait dit que c'était en voulant couper mon sac, le couteau avait glissé, ça je ne pouvais pas accepter parce que c'était pas comme ça. (...) C'était de savoir, comprendre pourquoi. Pourquoi le coup de couteau?*'

Furthermore, through interaction with the offender, victims were able to ensure that the offender gained a full understanding of the impact of the victimization. The respondents argued that victim awareness would be most efficiently and powerfully raised if they delivered their story directly to the offender, which in turn also allowed the victims to see whether the offender understood the impact of the victimization and was affected by it. They did not only want to tell their story; they wanted to see if and how it affected the offender.

> (Irma) '*Sans dialogue, comment est-ce qu'il peut y avoir une réparation? (...) Il y a eu un déclic chez (l'auteur) parce qu'il a parlé avec la maman de (la victime). Il a vu la maman qui souffrait en dehors de ce que les autres parlaient. C'était pas les médias, pas ses avocats, pas ses éducateurs, c'était un dialogue*'.

Such communication did not only affect the offender but had an impact on the victim as well. Eight victims mention that they were able to revise their image of the offender. Through their interpersonal contact they gained insight into the offender, what drove him

and his emotions regarding the consequences of the offence. Their behaviour was not justified or understandable, but could be contextualized.

> (Helga) '*I asked him about his family of origin. Because it was important for me to place him in a family*'.
>
> (Danielle) '*Je me suis aperçue que ces prisonniers là, ces hommes là, c'est vraiment des enfants dans des corps d'adultes*'.

A number of respondents (N=7) insist that the dialogue in the restorative approach was the only way for the victim to know the full and honest truth about what had happened and why it had happened. The offender would only disclose his intentions in the informal framework of the restorative intervention in response to the victims' questions, because there were no formal consequences attached and no judicial authorities present. The judicial investigation did not always uncover such details. In four cases in particular, the police had not been able to gather material proof against the offender or about his intentions and had to rely on the offenders' information. The offenders in question, however, had refused to disclose all the details to the police, to protect themselves or an accomplice. In two cases, this resulted in the events not being officially recognized to their right extent, *i.e.* being classified and prosecuted as an assault instead of as an attempted murder. It was only during the dialogue between the victim and the offender that the offender would admit to the assumptions of the victim.

> (Quinten) '*So I found out during the mediation with the juvenile (offender) (…), he told me that they put a stick to my throat, to kill me. (…) I didn't know about that. That must have happened while I was unconscious. (…) Which is clearly an attempt to kill, when you put a stick to one's throat and stand on it, right. I was on the ground and he put a stick to my throat and started jumping on it, apparently. (…) But unfortunately, I can't prove it, because I was unconscious. (…) (The offenders) weren't sure I was still alive (when they fled the scene). (…) That shocked me kind of, that that had happened. I thought they had only wanted to hit me and beat me up*'.

> (Translated by the author from Dutch: '*Heb ik dus vernomen met de bemiddeling van de minderjarige (dader) (...) die heeft me toen verteld dat die die stok op mijn adamsappel heeft gelegd om mij te vermoorden. (...) Dat wist ik dus niet. Want dat moet dus gebeurd als ik bewusteloos was. (...) Wat toch een zuivere poging moord is als ge met een stok op een keel gaat staan, hij is daar gaan opstaan hé. Ik lag op de grond en hij heeft die stok hier gelegd en is daar gaan bovenop springen 't schijnt (...). Maar jammer genoeg, ik kan dat niet bewijzen, ik was bewusteloos. (...) (De daders) waren er niet meer zeker van dat ik nog leefde (toen ze wegvluchten). (...) Dat heeft me efkes geschokt, dat dat gebeurd was. Ik dacht dat het vooral bij slagen en stampen gebleven was*'.

5.3.3. Therapeutic function of dialogue

What is more, the dialogue with the offender appears to be an end in itself. Either the respondents were not looking for an agreement or they appreciated the dialogue irrespective of the favourability of the outcome. The dialogue between the victim and the offender could be seen as more constructive than mere confrontation in court, allowing for the appeasement of tensions. It enabled the human side of the matter to emerge.

> (Larry) '*Afterwards I felt it had given me satisfaction, that I felt like "it was good that we had the chance to see each other", no matter what came out of it. (...) I had the opportunity to say what was on my mind, and he could say what was on his mind. Because, after all, we are still two human beings*'.
>
> (Translated by the author from Dutch: '*Ik had er ook voldoening van achteraf, dat ik dacht van "ja, het is ne keer goed geweest dat we mekaar gezien hebben", hoe dat het achteraf ook uitgedraaid is. (...) Ik kon ne keer zeggen wat er op mijn hart lag, en hij kon ne keer zeggen wat er op zijn hart lag. Want tenslotte zijt ge nog altijd twee mensen*'.)
>
> (Yann) '*Je pense que c'est mieux d'aller dans une logique de dialogue et de ... enfin que ça soit constructif plutôt que justement d'aller dans un affrontement au tribunal*'.

The dialogue with the offender was considered an important step to closure (N=22). The VOE respondents (N=6) in particular refer to the need to use the opportunity to communicate with offender as a tool to heal, even if it might have seemed difficult to do at

first. With the offender answering their questions, they felt relieved. It offered clarification and clarification was empowering. The more pieces of the puzzle could be laid down and fitted in, the less the victim was left guessing.

> (Xander, who was hospitalized after having been attacked) '*"Could you just for once explain to me why you did that? What got into you at the moment? Were you having a bad day? Did something frustrating happen to you that day? Did I unknowingly provoke you in any way?" I really wanted to have some sort of an answer to the question "why". Even though there is no good answer to that question, you just don't go attacking people, so there is no good explanation "but give me one anyway", that kind of feeling. (...) What happened was quite serious, (...) (and getting an answer) makes one believe in mankind a bit more again. Men are not born bad*'.
>
> (Translated by the author from Dutch: *'"Kunt ge mij nu eens uitleggen waarom dat ge dat gedaan hebt? Wat heeft u bezield op die moment? Had ge een slechte dag? Hebt ge iets heel frustrerend meegemaakt die dag? Heb ik u toch uitgedaagd zonder dat ik het wist?". Ik wilde eigenlijk echt zo een beetje een antwoord op de vraag waarom. Ook al weet ge dat daar geen goed antwoord op is, ge doet zoiets überhaupt niet, dus een goede uitleg bestaat niet "maar geeft toch maar eens ene". zo dat gevoel. (...) Dat is toch efkes ernstig wat ge meegemaakt hebt en (...) (een antwoord krijgen) doet u effe terug wat meer geloven in de goedheid van de mensen eigenlijk. De mens is niet van zichzelf uit slecht*'.

5.3.4. Discussion

As noted by Rugge, Bonta and Wallace-Capretta (2005), meeting the offender is the most difficult yet most rewarding step for victims who participate in VOM. The dialogue with one's offender or with surrogate offenders plays an important part in the victims' satisfaction with the restorative intervention. The respondents not only wanted to express their concerns and issues but also have a conversation about them with the offender. The interaction was key. It literally means the need for an immediate response to the victims' questions and story, and the verbal and non-verbal sensitivity shown by the offender in reaction to it. There is a stronger dynamic behind it than the mere unidirectional and static nature of voice in the procedural justice theory and is therefore unique to restorative justice.

Sherman *et al.* (2005) offer further insight into this topic by introducing the interaction ritual idea to explain victims' satisfaction with restorative interventions. They propose that a restorative intervention might be an excellent example of the interaction ritual described by Collins (as cited in Sherman *et al*., 2005) as '*social encounters with four distinct features: 1) people are physically together so that they are influenced by each others' bodily presence; 2) the boundaries of interaction membership are clearly defined so that everyone knows who is participating and who is not; 3) participants focus on a common purpose and know that all are focusing on it; and 4) participants share a common, if dynamic, emotional mood or entrainment experience. Feedback between these elements (…) produces a shared experience at both the emotional and cognitive level* (Sherman *et al*., 2005, p.371)'. Through this interaction, the victim is able to express all kinds of emotions, the offender is able to respond and even apologize, to which the victim can again respond by either accepting or refuting the offender's apologies. It is the dynamics of the interaction with the offender that contribute to the victim's satisfaction with the restorative approach.

5.4. Room for altruism

The group-value model and the normative justice motive, underlying the procedural justice assessments, explain why certain procedures are preferable over others. Procedures that confirm the standing of the disputant in the group, by way of allowing voice, treating the disputant with respect and assuring neutrality and trust, are considered to be fair. The relational justice motive implies that people are concerned with social bonds and wish to maintain these bonds, for instance with representatives of the community in the judicial system. As a result of the perceived fairness, people will be more willing to commit to the community, and its institutions will more likely be regarded as legitimate, ultimately leading to increased compliance. '*(G)roups generally benefit when those within them*

engage in cooperative actions that help the group (Tyler, 2000a, p119)'. Also, the more the disputants feel socially included, the more important compliance with determinants for fair procedures becomes. It has, for instance, been found that the stronger the feeling of inclusion in the group, the stronger the feeling of injustice is if disputants are not allowed voice (Van Prooijen, Van den Bos & Wilke, 2004). Such social identity can result from having been treated fairly (Blader & Tyler, 2003).[25] From our data, we retrieved the significance of the group value and social identity in the victim-participants' need for recognition (see 4.5.).

We also found that respondents participated to or appreciated the restorative approach for less opportunistic reasons than the confirmation of their standing in the group. The relational justice motive might well be a normative justice motive, distinguished from the instrumental self-interest motive underlying the distributive justice model as well as Thibaut and Walker's (1975 and 1978) procedural justice model, but it is still mainly concerned with an individual's rather than a group's interests. In our respondents' stories there was a recurrent indication for altruism. The observed altruistic motives move beyond the procedural justice model. Altruism means that people are not (only) acting in their individual interest, be it instrumental or normative, but (also) in the interest of others and the community. It implies that people actively engage themselves to look after a better society, instead of the well-being of the society possibly resulting from the perceived fairness and legitimacy of the authorities as proposed by procedural justice scholars. There is a subtle difference between the well-being of the community as the passive effect of fairness and it being at the basis of one's active engagement in a certain procedure.

[25] One could then wonder what came first (the group-value explaining the fairness of procedures, or the fair procedure affecting one's social identity) and, hence, what is cause and what is consequence.

5.4.1. Altruistic motives towards society

First of all, in combination with the need to express their emotions and concerns towards the offender and to get answers to their personal questions, a fair number of respondents (N=13) also recognized a certain societal interest served by the restorative intervention. More specifically, by having the offender realise the impact of his harmful acts, they might have encouraged desistance from crime through a dialogue with the offender. As such, they accepted to play an active role to benefit others' as well as their own interests within the framework of the restorative intervention.[26]

Offenders did not always seem to grasp the extent of the harm they had done. It was argued that especially by directly communicating with the offender about the impact of the victimization the offender's victim awareness could be raised. The respondents could give firsthand information about the consequences of the harmful acts, making the description of the physical, psychological and emotional consequences personal and concrete and, therefore, more powerful. In doing so, further harm by the offender might have been prevented. Even though they had no guarantee of non-repetition, the respondents felt okay with having at least tried to encourage the offender to desist by communicating with the offender about the extent of the harm caused. We want to note that the VOE-program's objectives explicitly include the purpose of raising victim awareness among offenders, which the VOE-respondents (N=6) accepted in addition to it serving their personal needs

[26] Other examples emerging from the interviews of such altruistic acts, unrelated to the motives for participation in a restorative intervention, were the creation of a fund in the victim's name, used to organize seminars in high schools to inform adolescents about the consequences of violence, the plan to create a fund for child victims of sexual abuse, and the involvement in a state-sponsored victim policy forum or in a victim-support group. These initiatives can be related to the willingness of victims to use the negative energy and pain caused by the victimization to contribute to a safer society, defying the image of the passive victim by becoming active victims (Van Dijk, 2006).

for healing. But also VOM-respondents mention the potential effect of their participation on the safety of the society (N=7).

> (Christa) '*Si plus de monde parle pis qu'ils font conscientiser (les agresseurs), mais peut-être un moment donné il va en avoir de moins en moins. Ben, j'ose espérer là, que ça va aller vers un avenir meilleur*'.
>
> (Rita) '*Ben ça, les gens qui commettent un crime, ils vont pas commencer à réfléchir à tout ça avant. Et disons que la médiation quelque part, ben, aide à leur faire comprendre. (...) Quand on s'est vue, je ai dit (à l'auteur) "écoutez, ce que vous avez volé (de mes parents), pour vous ce n'est que de l'argent mais pour mon père c'était l'argent de son enterrement". (...) En fait, on s'imagine pas quelle proportion que ça peut avoir*'.
>
> (Xander) '*I wanted to do the mediation because… . It seems more useful to try and get to these young guys, right, to try and make them aware of what they have done instead of just, *wham*, punish them*'.
>
> (Translated by the author from Dutch: '*Ik wil wel bemiddeling in de zin van ... . Het lijkt mij zinvoller om die jongens, ja, proberen te raken, hé, om die bewust te maken van wat ze gedaan hebben dan die gewoon, *boenk*, straf op te zetten*'.)

Some of it has to do with norm confirmation as well and is related to the value-expressive dimension of voice towards the offender (see 4.3.3.). Three respondents mention that they wanted to explain to the offenders that what they had done was simply wrong, no matter what the actual consequences and what the offenders' intentions were. Fact of the matter was that their actions were or could have been, whether intentionally or unintentionally, even more harmful. In two of these three cases, the consequences could have been much worse and the offenders were lucky not to have killed or seriously hurt the victim. In the third case, the respondent was willing to accept that the death of her child had been unintentional but the offender had to realize that his aggressive behaviour had caused the victim's death nonetheless. These respondents wanted to urge the offenders to consider the potential consequences of his impulsive aggressive behaviour.

> Xander was knocked out by a punch to the face, which prevented him from breaking his fall. As a result, he fractured his skull. His life was severely threatened by what happened, even though the offenders might not have intended for him to be badly hurt. '*I also told him: "Unfortunately for you (I was hurt badly), and fortunately for you (I didn't die). You just don't hit someone. Do not take the chance that you might kill someone". I ended up being okay, and, therefore, (...) I don't want to dramatize what happened, but it's important that they realize what could have happened. They're young, they can still be educated, well, to some extent*'.
>
> (Translated by the author from Dutch: '*Ik heb het hem ook zo gezegd: "Ge hebt pech (dat ik zwaar gewond was) en ge hebt geluk (dat ik niet gestorven ben), ge doet zoiets gewoon niet. Neem dat risico niet dat je iemand effectief dood slaagt". Ik kom er goed vanaf denk ik en daarom (...) wil (ik) dat niet dramatiseren maar het is belangrijk dat ze het weten, vind ik. Het zijn jonge gasten, die worden nog gevormd, allé, voor zover dat nog kan*.')
>
> Fiona's child died instantaneously after being hit in the neck. She believes the offender did not intend to kill, but he had to realize that it sometimes only takes one fatal strike, no matter how unintentional, to kill someone. '*I had to tell him the story of what we went through that night. Even know what (our child) died of. He didn't even know! (…) I do know, and I did tell him, that I know it was not his intent that night to kill (our child), but he had a violent history. And that is the way he ran his life. Anything he didn't get, he used violence. (…) So I knew it was not his intent, he did not walk out of there saying "I'm going to go kill (X)". But he did. And it was his way of life that brought him to the point where he was sitting in front of the mother of the (child) that he had murdered*'.

Two respondents took the well-being of the society even more directly to heart. One describes her participation in the restorative intervention as her civic duty. She did not think it was courageous to meet the juveniles that had aggressed her, although the judge had congratulated her for participating. She thinks it was only normal to accept the invitation to the intervention in order to do her bit for the safety of the society. Another respondent simply lives by the rule that when you do good for others, good will come to you. Despite having been attacked by a complete stranger, resulting in permanent impairment, he still abides by that principle.

> (Ursula) '*The judge really appreciated that I wanted to participate to the mediation. (…) The judge congratulated me for having participated. Actually, I did not think it was such a courageous deed I did, really. I actually thought it was only normal. I felt like I had maybe just done my civic duty. (…) Even if it did not change anything, oh well, you know, I wanted to invest my time. (…) I was willing to do my bit*.
>
> (Translated by the author from Dutch: '*En die rechter vond het wel zeer goed dat ik daar wilde aan meedoen, aan die herstelbemiddeling. (...) Die rechter heeft mij gefeliciteerd dat ik daar willen aan meewerken heb. Eigenlijk, ik vond dat geen heldendaad, zene. Ik vond dat gelijk normaal. Ik vond dat ik mijn burgerplicht misschien gedaan heb. (...) Heeft het niets toe bijgedragen, ah bah ja, ik heb er mijn tijd willen insteken. (...) Wil ik daar ook mijn steentje bijdragen (lacht).*')

As indicated before, communicating with the offender required an effort from the victim-participants. Nonetheless, the victims persisted because of the expected positive effect on them as well as on the society. It was argued that it is through the direct interaction with the offender, unique to the restorative intervention, that victim awareness can be raised and social norms confirmed.

> (Irma) '*Quand j'ai rencontré (l'auteur), c'était un moment très dur, mais très constructif pour moi. Pour (l'auteur) aussi, parce qu'il a fait une démarche depuis. (…) Chaque fois c'est les parents qui se battent. Mais c'est pas toujours très simple. Non. Ça demande beaucoup d'énergie. Beaucoup d'énergie. Parfois je me dis aussi, "laisse tomber", mais je me dis, "non, je peux pas laisser tomber". (…) Qu'est-ce que vous voulez qu'on fasse encore à mon enfant. On va plus rien faire à mon enfant. Je serais égoïste de dire je laisse tout tomber. Non, il y a des jeunes, il y a d'autres enfants, il y a d'autres ci, j'ai des neveux, j'ai des voisins. Toutes les démarches que je fais aujourd'hui, c'est pour eux. C'est plus pour moi. Moi je suis victime, j'ai fait le procès, le procès était fait. (…) Et qu'on s'apitoie pas non plus hein. Je suis malheureuse mais je suis pas seule malheureuse. Il y a plein de gens malheureux. Je veux faire avancer les (choses). Je veux avoir une place. Mais je veux pas qu'on me plaint, je veux pas "pauvre maman". Non, non, tous les jours, tous les jours il y a des pauvres mamans. On est bien trop nombreuses. Si on peut faire avancer les choses…*'.

5.4.2. Altruistic motives towards the offender

There was also a recurring indication for altruism towards the offender. This is related to a personal ideology as well as to acting for the greater good. By helping or encouraging the offender to turn his life around, respondents felt they contributed to a better future for the offender, and consequently also, again, contributed to a safer society. A total of fifteen respondents refer to the restorative intervention as an opportunity to help the offender.

Four respondents said they participated in the restorative intervention (three in VOM and one in FGC) to help the offender getting a lenient punishment. They hoped that their participation and the written agreement or the juvenile's intention plan, would encourage the judicial authorities to give the offender the least possible sentence, allow him to get out on parole as soon as possible, and in one case, even drop the charges all together. The sooner the offender would have completed his sentence, the sooner he could pick up the thread and start rebuilding his life.

> (Greta) '*The only thing I keep hoping for is that he is released as soon as possible, of course, supervised. (…) He can use (our mediation agreement) if he applies for parole. I want him to benefit from it. He did not force us to meet and talk*'.
>
> (Translated by the author from Dutch: '*Het enige dat ik altijd peins dat hij maar zo rap mogelijk in de maatschappij komt, natuurlijk, onder begeleiding. (…) Hij kan (onze bemiddelingsovereenkomst) gebruiken als die voor die vrijlating gaat. Van mij mag hij daar baat bij hebben. Hij heeft ons ook niet gedwongen dat gesprek te hebben*'.)
>
> (Herman) '*I don't have anything against him and I didn't want him to be punished and that is why I accepted mediation. (…) (What he did) was simply foolish*'.
>
> (Translated by the author from Dutch: '*Ik heb niks tegen hem en ik vond ook niet dat hij gestraft moest worden en daarom ben ik op bemiddeling ingegaan. (…) (Wat hij heeft gedaan) was een stommiteit'*.)

Two respondents also point out to have initiated the VOM procedure to allow the offender to express himself, as he did not have much opportunity for voice during the judicial proceedings. This motive was not so much related to the victims wanting to hear the offender explain why he hurt them, in order for them to get a better insight in the events and in the offender, but rather to the perception that the offender must have had a need to express himself as well. They wanted to allow him to talk in a private and informal setting and were simply willing to listen.

> (Simon) '*Il avait vraiment besoin de parler et d'être entendu par des gens qui ne l'interrompe pas pour juger ce qu'il disait. Et on ne jugeait pas ce qu'il disait. On écoutait. (...) Il a manifesté de devoir beaucoup parler. J'ai l'impression qu'on est le cahier dans lequel il écrit. Et dans ce sens là j'avais l'impression qu'on a servi à quelque chose quoi*'.
>
> (Greta) '*That is why I gave (the offender) the chance to speak. (...) I found that he had not been given a lot of opportunity to ... . (...) You know, I understand that the prosecutor, he defends the society, but I felt that (the offender) had been handled roughly*'.
>
> (Translated by the author from Dutch: 'Daarom heb ik (de dader) ook de kans gegeven om hem een keer laten spreken. (…) Ik vind dat ie niet veel kans gekregen heeft om zich ... . (...) Ja, ik versta ook, die procureur, voor, ja, dat dat de maatschappij is dat die verdedigd maar ik vond wel dat (de dader) hard aangepakt geweest is.

Two respondents declare that they wanted to offer the offender forgiveness. They argued that forgiveness is incredibly powerful and necessary for the offender to get a grip on his life again. Forgiveness would allow both the offender and the victim to find closure and, therefore, to move on (for a theoretical and empirical account on the impact of forgiveness on the victims, see Armour & Umbreit, 2006). These respondents' stories centre strongly on forgiveness, for their own sake as well as for the offender's. That is why one of both had started writing letters to the offender, resulting in VOM, and the other to have contacted the mediation services. In other words, the need to forgive the offender did not result from the mediation, but was the reason they initiated VOM.

> (Frankie) '*J'ai écrit à (l'auteur), "voilà, je te pardonne". Mais ce que je ne peux pas lui pardonner c'est la femme que je suis devenue. Je suis devenue quelqu'un poreux, quelqu'un qui ne va plus vers les autres, qui reste enfermé, qui a peur tout le temps, ça par contre je ne peux pas lui pardonner. Ça je lui en veux. (…) C'est déjà bien que j'aie pardonné le geste. Je me suis dit pour que lui il avance, il* fallait *qu'il soit pardonné*'.
>
> (Helga) '*It just took me, you know, it took me a while after my (sibling) died, actually it was about five years, that I decided that I wanted to meet the man who killed him… just to tell him that I forgive him. (…) I didn't know how I could meet him. And so I went onto the Correctional Service Canada website to find out what I needed to do for that to happen*'.

In nine interviews we found a strong indication for a parental approach colouring the experiences in the restorative intervention. These parental feelings either emerged from the communication with the offender (N=4), or motivated the respondents to meet the offender (N=5). Only in two cases the offender was legally a minor, in the other cases the offender was a young adult. Despite the age of the offender, which might explain the parental approach, it remains quite remarkable that almost one third of our respondents fit this approach. They felt they needed to urge the offender to choose a law-abiding, less aggressive lifestyle, and felt the offender can still change. Four of these nine cases concern the death of the respondent's child or another family member as a direct consequence of the offence. In two of these cases both the offender and the victim were drug addicts, and the manslaughter had been committed while both the offender and the victim had been under the influence of drugs. Both respondents argued that it could have been the other way around and that their child or nephew could have killed someone and ended up in prison. They recognized that drug addicts need help more than they need to be punished. However, while such parental feelings were present, they were hard to deal with for some. In one case, the feeling of compassion for the offender, although he had immensely hurt the respondent, jeopardized her healing process. Actually, in this case, the mediation took place for the victim to find closure by putting the offender out of her mind after having been able

to tell him how she and her family felt. She wanted to liberate herself from the maternal feelings she had for the offender.

> (Frankie) '*Mes lettres étaient fort maternelles. J'avais (un enfant) qui touchait à la drogue donc je comprenais plus ou moins la réaction de (l'auteur). (…) Il avait l'impression que je prenais la place de sa mère. (…) Il fallait que ça soit salvateur en fait. (…) Je voudrais répondre à l'agression par la gentillesse, comme si mes lettres pouvaient le changer, qu'il redevient quelqu'un doux. J'étais très maternelle en fait. (…) Mais bon, j'avais (un enfant) qui touchait aussi à la drogue. Donc j'ai fait un transfert. Comme j'ai voulu protéger mon (enfant), je voulais protéger (l'auteur)*'.
>
> (Irma) '*Ça me faisait mal au cœur hein de voir (l'auteur) comme ça et de dire "mais qu'est-ce que t'as fait avec ta vie ?!". Oui ! C'est ce que, t'es une maman, qui est un peu de protection et… . Parfois je m'en veux d'avoir comme ça un sentiment… . J'aurais pas d'amour (pour l'auteur), ça certainement pas. Mais pas de haine. Un sentiment d'affection quelque part quand je le vois… . C'est pour en pleurer parce que (il a tué mon enfant). (…) J'arrive pas à avoir de la haine. J'ai plus de haine pour la justice, par exemple*'.
>
> (Fiona) '*(The offender) looked like a normal young (man). And it shocked me, that shocked me, because I didn't want him to look like that to me. I wanted him to be the vision of a bad person. And I think that is what started (…) the connection I had with him. (…) And so he was taken into custody right then (after he was found guilty in court). He was on the floor and he was crying and he was saying "don't take me" and … (sighs) it broke my heart. And I didn't want to feel bad for him. He killed my (child). I've struggled and I worked hard with these feelings. He just seemed to me like a lost little boy. And I had this stupid feeling that I was going to be the one to save him, make him a better person. I've learned, over the years, that I can't be that person. And I did a lot to work out my feelings and be able to put him aside*'.
>
> (Ines) '*Donc (l'auteur dans le VOE) qui lui librement venait me caresser le dos parce que je pleurais, me ramenait dans cette partie de contact, de proximité avec mon (enfant). Parce que tu sais, c'est du transfert qu'on fait, hein. (…) Lui il voyait sa mère en moi, il voyait tout le mal qu'il a fait à sa mère, il voyait la douleur, il voyait tout le fait qu'il a pas réglé les choses avec sa mère. Que jamais ils se sont parlés de leurs émotions. Ils n'en ont jamais, ils ont jamais ouvert le sujet. Donc sa mère est morte aujourd'hui,*

> *puis moi dans le fond je n'ai que (représenté) toute la douleur que sa mère avait eu et qu'il prenait conscience de ça*'.

Mostly, the urges to help the offender were combined with other needs. However, four respondents insist that they had no other needs but to listen to the offender, to help him or to forgive him. Three of these cases are related to murder committed by an adult offender, and one to a threat with a firearm. Only in this last case the victim knew the offender prior to the events (the offender used to be a friend of the respondent). Three of these respondents had also been actively trying to meet the offender, before being aware of the existence of the mediation program. They had either contacted the correctional services or the offender's parents to organize a visit with the offender, after which they had been referred to the mediation program. They wanted to support the offenders in reconstructing their life. It was also argued that the offender is first of all a human being, who made a mistake and deserves a second chance.

> (Simon) '*Bon, la raison plus profonde, je dirais, de ce rencontre avec l'auteur c'était dès le départ, même avant, même qu'on était concerné par ces faits, on avait déjà la pensée que (...) ça peut être une aide très modeste, mais enfin, de rencontrer quelqu'un qui se sent considéré comme rebut, parce que il a commis. (...) De ne pas rester avec cette sensation d'être obligé de se sentir perpétuellement coupable d'un acte qu'il a fait. (...) On voulait dissocier l'acte fait par un homme un certain moment de l'homme lui-même. (...) On voulait lui montrer qu'on pouvait voir en lui l'humain, avant le meurtrier. Et c'est pour ça que spontanément on est allé vers la décision de le rencontrer. (...) C'était pour lui donner la chance de se reconstruire. (...) On a rien fait, simplement on s'est montré disponible pour le rencontrer et que si lui il voulait nous parler. (...) Je crois que c'était bien pour lui. Ben, ça nous correspondait. Pour nous même, on s'est senti, oui, en accord avec notre projet quoi*'.

These altruistic motives can be related to the respondents' view on crime in general. Respondents referring to altruistic motives, for instance, seemed to prefer prevention and

alternatives sentences rather than punishment and prison sentences. Some might argue that this is what Latimer, Dowden and Muise (2005) meant with the self-selection bias, and that people with a certain vision on society and crime accept the restorative approach and are therefore more likely to be satisfied with it. Admittedly, the four respondents whose sole purpose for initiating the restorative intervention was to help the offender, could indeed support the prevalence of a self-selection bias, but the self-selection bias does not explain each victim-participant's satisfaction with the restorative offer. The majority of our respondents do not explicitly comply with this image and often different motives were at stake. Moreover, such altruistic motives as described here did not necessarily exist prior to participation in the restorative intervention, but sometimes emerged *from* participation in the restorative intervention. In other words, the altruistic motives either resulted from the communication with the offender or were the reason to initiate or accept to meet the offender.

5.4.3. Discussion

The observations regarding the altruistic motives again reveal the importance of direct contact and communication with the offender. Interaction with offenders is needed to efficiently raise victim awareness, give the offender the opportunity for voice, and pass the offender a message of support or forgiveness. Restorative justice complies particularly well with these selfless motives. Altruism is not an uncommon finding in restorative justice research. Altruistic motives were observed in several evaluative projects, both with regard to interventions concerning juvenile as well as adult offenders and different types of crime (*e.g.* Umbreit, 1994b; Doak & O'Mahony, 2006; Shapland *et al.*, 2007). It would certainly indicate that the victim is not vengeful (Umbreit, 1989; Doak & O'Mahony, 2006). On the contrary, some victims are willing to engage themselves to contribute to a safer society and to help the offender, as well as to work on their own healing process. This could refer to

what Braithwaite (1999) labelled the compassionate approach underlying the restorative justice model.

The group interest in conflict resolution procedures is not left entirely unexplored by procedural justice scholars. Studies on the role of the social identity first of all explain how the group-value serves the individual, but some studies with regard to social identity focus on individuals' contributions to the group. One's sense of inclusion and social identity can inspire disputants to accept or appreciate procedures and outcomes that serve the group, even if these procedures and outcomes might not (fully) respect one's own interests (Wagstaff, 1998). Disputants have been found to be ready to take one for the team if they feel included (Bora, 1995; Colquitt, 2004). These studies have a strong link with research on decision-making in social dilemma's and cooperative behaviour (*e.g.* Schroeder *et al.*, 2003; Hafer & Olson, 2003; Clayton & Opotow, 2003; Tyler & Degoey, 1995). They also draw on Rawls' work on pure procedural justice (Machura, 1998). Research on the impact of social identity on the group-interest is related to intergroup conflicts, while we focus on interpersonal conflicts. In other words, the studies on social identity offer insight into why social identity matters and what the group means to the individual, but the reverse exercise, *i.e.* finding how the social identity might inspire disputants to use interpersonal conflict and the dispute resolution process to serve the society, has yet to be made.

We do not want to overstate the importance of the group interest in the assessment of the restorative intervention either. We do not want to suggest that every victim who participates in a restorative intervention *chooses* to participate because of it being an altruistic option, but they *appreciate* it because of the opportunity to do something for society by raising victim awareness among offenders and hence potentially contributing to the prevention of new crime. It is very noteworthy that almost half of the respondents describe the impact of their participation on the society as desirable and appreciated the offer for it. The opportunity for compliance with an altruistic motive is then a factor for satisfaction, not

necessarily a driving force. Altruism is in that sense not necessarily a choice, as presented by Rachlin (2002), but an effect or a secondary motive. Not all the victims in our sample had selfless motives either. Actually, victims have every right to be selfish in wanting to meet the offender. They want to act because injustice threatens their stability (Lerner, 1977; Wagstaff, 1998), and in doing so they intentionally or unintentionally also work on restoring stability for others.

The indication for altruism towards the offender might be more directly related to a personal ideology. One of Braithwaite's (1999) points on his list of pessimistic accounts on restorative justice (as opposed to his extensive list of optimistic accounts) concerns the risk of victims becoming props for the offender's rehabilitation. Our observations suggest that victims are willing to accept this role or even actively seek to do their bit. Scientific findings on selflessness have often been regarded as controversial (Wagstaff, 1998), but such motives do not have to be purely selfless. According to Lerner (1977), in society people both display selfless and selfish justice motives. It is difficult to predict when which motive will occur, as it depends on the subjective perception of a situation (*e.g.* did it concern a deserving or non-deserving victim?), but either one will always serve to protect the image of a just and orderly world (which in turn is a self-interest motive). In order to make altruism a less objectionable and more acceptable idea, Wagstaff (1998) proposes to label it '*non-exploitative selfish motives*', as often these motives do serve some intrinsic self-interest (*e.g.* feeling good about oneself for having helped another person or complying with one's religious principles), no matter how '*prosocial*' (Lerner, 1977) these intentions may be:

> '*(T)hose who help others because helping characteristically gives them pleasure, or out of some dispositional impulse they find difficult to explain, can perhaps be more relied upon to provide help than those motivated purely by extrinsic rewards. Helping behaviors motivated by intrinsic selfishness may, therefore, be often construed as more socially desirable, and classed as altruistic, than those motivated by extrinsic selfishness. (...)*

> *Although, for most individuals justice may ultimately be driven by selfishness, the selfishness is primarily non-exploitative and could be considered socially desirable for human groups in that its aim is to mutual advantage. (...) Exploitative selfishness is not actually by itself just or unjust; instead justice aims to discourage only those who from a starting point of equal ratio equity seek to gain selfishly at the expense of others. (...) But significantly also, altruism, whether construed in terms of non-exploitative selfishness or unbridled pure selflessness, is also neither just nor unjust* (Wagstaff, 1998, p.128-129)'.

5.5. Restorative justice is more than mere procedural justice

The restorative approach is not only a good application of the procedural justice model, it also offers more than that. In other words, as it seems, the procedural justice framework offers a necessary but insufficient explanation for victim satisfaction with restorative practices.

The restorative procedures were appreciated for being flexible, which cannot be explained by the procedural justice model and its statements regarding the significance of informal and bilateral procedures. The appreciation of the restorative procedures was not only related to the maximized process control or personalized treatment by the mediator; it was also about the procedure's quality to adapt to the victim's timing and accommodate specific needs. Each victim-participant could get as much or as little as needed out of the restorative intervention. Whether the victim participated to find healing, to defuse the conflict with the offender, to listen to the offender or simply to avoid having to be present in the courtroom, it could be responded to in the restorative approach. It could be therapeutic, if that was what the victim was looking for, or it could be a practicality, if that was all the victim was looking for.

The mediator has a very specific task at hand, *i.e.* to help the victim and offender resolve the conflict and restore the damage done. As such, they are a source for information and a facilitator. However, they do not only focus on the conflict and therefore they fulfil a larger role than that outlined in the procedural justice model. They are also available for emotional support. The appreciation of the preparation and support provided by the mediator refers to the mediator being seen as caring for the victim.

Victims did not only want to express their concerns and be heard, as predicted by the procedural justice model; they wanted to interact with the offender. The dialogue with the offender enabled them to get their questions answered and to see the reaction of the offender on their story, emotions and concerns. This dialogue was an end in itself. Getting the answers and talking with the offender about the impact of the victimization was described as appeasing. The bi-directional nature of the dialogue transcends the unidirectional nature of voice in the procedural justice model.

Finally, victims were not only looking for recognition or, in procedural justice terms, for a confirmation of their standing in the society. They also appreciated the restorative intervention because it allowed them to do something for the group by raising victim awareness through the dialogue with the offender or by offering the offender forgiveness and support. Such altruistic motives either emerged as an effect of the participation in the restorative intervention or motivated the victim to initiate or partake in the restorative intervention. Selfless justice motives are unaccounted for by the procedural justice model as far as interpersonal conflicts are concerned.

6. Experiences related to the restorative approach in the pre- and post-adjudication stage

Our final empirical objective concerns the appreciation of the restorative approach relative to its timing in the judicial proceedings. We wanted to explore whether the restorative intervention is satisfactory both before and after penal adjudication. One might expect that the absence or availability of a judicial decision could affect the evaluation of the restorative intervention. We exhausted our data to find whether the evaluation of the restorative intervention differed when applied before or after adjudication. Our data also allowed extrapolating where the respondents place the restorative intervention in the whole of procedures they followed and how these different procedures relate to each other. As such, our observations shed light on why it is interesting to offer restorative justice to victims of violent crime before or after judicial adjudication.

As mentioned before (see 3.4.2.; see also annex 3) only 28 of the 34 interviews could be considered to respond to this objective. Six interviews could not be sorted in the pre- or post-adjudication group because the respondents could not remember in which phase the restorative intervention took place, because the restorative intervention and judicial proceedings crossed each other (the VOM procedure was initiated and the preparation for the face-to-face meeting was ongoing when the trial started, while the actual face-to-face meeting between the victim and offender only took place after the offender had been sentenced), because the respondent never filed a complaint, or because there was no trial as the offender had died at the crime scene. Of the 28 remaining respondents, half partook in a restorative intervention before adjudication and the other half after adjudication. Only one of the fourteen respondents in the 'participation before adjudication' group is Canadian (a victim of sexual abuse who took part in a VOE before the decision to prosecute was made). This group also includes eleven respondents having done a VOM, two an FGC and one a VOE. For a number of respondents in this group a judicial decision has not been taken yet

(N=4) or is unknown to the victim (N=2). For all respondents the restorative intervention was finalized, but one respondent had asked the mediator to re-launch the intervention as the offender had finally failed to sign the agreement. In the 'participation after adjudication' group six respondents are Belgian and eight are Canadian. For two of these Canadian respondents prosecution never took place due to a lack of evidence (both cases concern sexual aggression and the respondents participated in a VOE). We considered the decision not to prosecute to be an equivalent to adjudication. The experience of these two victims with the criminal justice system is consequently limited to dealing with the police and the prosecutor. The 'participation after adjudication' group includes twelve respondents having participated in a VOM, and two in a VOE.

We want to note again that the purpose of this chapter is to compare the experiences of victim-participants with a restorative intervention in the pre- and post-adjudication phase, not to compare the situation of Belgian and Canadian victims with regard to restorative practices as such. In the following paragraph (6.1.), we present our observations regarding the appreciation of the restorative intervention in relation to it being applied before and after judicial adjudication. The general appreciation of the restorative approach did not differ relative to its timing in the judicial proceedings. All the respondents in the pre- and post-adjudication group positively evaluated the restorative intervention. However, the specific reasons for appreciation differed. In paragraph 6.2., we discuss the relation between the restorative and judicial procedures suggested by the respondents in both the pre- and post-adjudication group. In both groups, respondents favour the complementary nature of the restorative intervention in relation to the judicial proceedings, irrespective of its timing. Our findings also suggest that participation in a restorative intervention prior to the trial can positively impact the evaluation of the criminal justice system.

6.1. Appreciation of the restorative intervention relative to its timing in the judicial proceedings

As already revealed in 4.2.2., none of the respondents in our entire sample of 34 negatively evaluated the restorative intervention. The fourteen respondents in the 'participation before adjudication' group and the fourteen respondents in the 'participation after adjudication' group were generally satisfied with the restorative approach.

Table 4. Distribution of the positive and negative evaluation of the restorative intervention

	Participation in RJ before adjudication	**Participation in RJ after adjudication**
Positive evaluation restorative intervention	14	14
Negative evaluation restorative intervention	0	0

The satisfaction of our respondents with the restorative intervention before and after adjudication is palpable. They present their experiences with the intervention as appeasing, liberating and validating. In both groups the restorative approach is appreciated for having produced the opportunity to voice emotions and concerns, to explain to the offender how the victimization has affected their lives, to get the answers they needed, to find recognition, and to hold the offender accountable. Despite the respect and recognition respondents in either group might have received from the judicial authorities, and the chances they had to present their issues to the judicial actors, it was the dialogue with the offender they were looking for.

The observation on the general satisfaction of victims using restorative intervention either before or after adjudication is in line with what Rugge, Bonta & Wallace-Capretta (2005) found. In their exploratory research on the usefulness of VOM in crimes against a person

applied in a pre-sentence phase, they demonstrated that VOM is satisfactory both in a pre- and post-sentence phase and that it is attributed a healing impact when applied in either phase. According to Wemmers (2002), the positive results regarding restorative practices indicate that one does no longer have to ponder whether or not restorative practices should be offered to victims of crime, but when and how restorative justice should be offered.

The application of restorative practices both before and after adjudication makes sense and is appreciated by the victim-participants. The overall assessment of the restorative intervention is quite similar for our respondents who used it before or after adjudication. However, in comparing the experiences between the victims who partook in a restorative intervention in the pre- and post-adjudication group, we could find some differences as to why exactly they had appreciated the restorative approach relative to it being applied before or after adjudication.

6.1.1. Victims' appreciation of the restorative intervention before adjudication

6.1.1.1. Preparation for what comes next

Apart from the impact of participation in a restorative intervention on the emotional recovery, learning the truth or finding closure, it also proved to be helpful in preparing mentally and emotionally for the judicial trial. First of all, the judicial system was unknown and abstract to all but two respondents (who are lawyers). The respondents had the impression that the system was cold and impersonal. Three respondents in the group 'participation before adjudication' had been supported by victim support services at the court, which provide information about the judicial proceedings, assistance when studying

the judicial file before the trial and accompaniment during the trial. None of our respondents mention it, but we can assume that the mediator was also able to give them some insight into the formal elements of the judicial proceedings, in order to get a better idea of what was going to happen after the restorative intervention. Although the restorative services operate outside the criminal justice system, they are in touch with judicial actors, if only because they get referrals from the criminal justice services and mediation agreements can be added to the judicial files. They, therefore, have a certain knowledge of the system's structure. In Belgium, where thirteen of the fourteen respondents in this group were interviewed, cooperation agreements regarding victim-offender mediation between judicial, support and mediation services have been developed and applied, even before the law on victim-offender mediation of 2005 came into force. These agreements regulate referral procedures between the different services in the field as well as the district councils on victim-offender mediation assembling the different partners (the local mediator, the prosecutor and local victim support workers). As a result, the different services involved are familiar with each other's activities and offer to victims of crime.

However, five respondents highlight that it was particularly the interaction with the offender that prepared them for the trial by supplying them with a superior insight in the events and the offender's motives. Such information would otherwise either only be revealed at the trial during the interrogations of the public prosecutor, the civil party's lawyer and the judge (who is an active judge in the Belgian inquisitorial regime, see 2.1.2.2.) or be left unsaid all together (because the police did not always discover this information and the offender leaves it undisclosed). Furthermore, even the study of the judicial file before the trial, which is a right of victims registered as a civil party in the Belgian regime and of which three of the respondents in the 'participation before adjudication' group made use, could not allow for a similar insight. It was the direct communication with the offender and the opportunity to ask questions regarding the crime and the motives that allowed them to know certain details prior to the actual trial. The

victims did not remember certain details of the events, or had no realistic image of what had happened exactly (*e.g.* in case of a murdered relative), and had been left guessing for the offender's motives. Because of VOM, they did not have to wait for the trial to get the answers they were looking for or to find some sense of closure. Finally, the established insight in the events and the motives protected them from shock at the trial. Several respondents of the 'participation after adjudication' group (N=3) noted that the revelation of certain details or the explanation of the violent action was consternating. In other words, communication with the offender prior to the trial permitted the respondents to create a realistic image of what had happened and why it happened and to prepare them for the emotional impact of the judicial proceedings.

> (Petra) '*It was good that we could talk to (the offender) before the trial. "Could you tell us what exactly happened that day?". And that we could ask him questions ourselves. So, at the trial, well, we had already heard everything and heard it for the second or even the third time*'.
>
> (Translated by the author from Dutch: '*Dat was ook goed dat wij daar op voorhand met hem al over hebben kunnen spreken. "Zeg tegen ons nu ne keer, wat is er daar allemaal gebeurd" en dat we zelf vragen kunnen stellen. Dus dan op het proces, allé ja, was het voor ons al een tweede keer, of een derde keer dat we het gehoord hadden*'.)

6.1.1.2. Opportunity to ease the tension before going to trial

The restorative intervention and communication with the offender also allowed easing the tension between the victim and the offender. Seven respondents mention this effect. All seven of them knew the offender prior to the aggression, the bond with the offender ranging from a close familial relationship, a past friendship or merely knowing the offender through a friend. The dialogue with the offender permitted to defuse the situation prior to the confrontation at the trial.

> (Winona) '*Et (VOM) apparaît …, enfin, je pensais que ça allait calmer les affaires un petit peu*'.
>
> (Yann) '*Au départ, ce que j'avais envie, c'est que (l'auteur) soit puni. Hein, j'avais envie qu'il soit sanctionné. Mais au fur et à mesure j'ai réfléchi et ce qui m'importait plus c'était que moi je me sentais en paix avec moi-même et que je n'ai pas peur de le voir ou de le rencontrer hein (…). (On peut) engagé une médiation réparatrice pour apaiser les tensions*'.

One of these seven respondents also mentioned that by having met the offender at the face-to-face meeting, they were not confronted with the offender in court for the first time since the events. It made it less awkward to see the offender in court. Two others (two siblings) suggest that the serenity and respectful atmosphere that reigned in the courtroom during the entire *Assises* trial resulted at least partly from the VOM. The air between them and the offender had been cleared, questions had been asked and responses were given, and their relationship had been restored, which they felt must have reflected on everyone present in the courtroom, including the prosecutor and the jury. They felt that everyone must have seen that they would not break the bond with the offender (their parent), without wanting to deny or excuse the pain and sadness that he had caused. This made for a serene atmosphere, creating room for the strong emotions of the relatives of the victim and the offender present in the courtroom.

> (Petra) '*(The* Assises *trial) was serene. Without too much fuss and stuff. And without being rancorous to one or to the other. But that is also the result of what we had done already, prior to that, right, prior to the trial. (…) They were open to that, the jury. Because you could sense that they looked at us. (…) They had an affinity towards us. They looked at us. At how we felt about it all. So the fact that we did mediation, and that our experiences were positive, I think that must have contributed partly. (…) And the journalist (following the trial) also said to me "I have never seen anything like this before", he said, "it is almost like a feel-good trial" (…). I had the feeling that what he wanted to say was that it was the kind of trial where everyone could say what he had to say and everyone understood what was being said*'.

> (Translated by the author from Dutch: '*Het (assisenproces) was sereen. Zonder zo al te veel tralala en dingen. En zonder echt rancuneus naar de ene of de andere te zijn. Maar dat is ook het resultaat van al hetgeen dat we gedaan hebben, daarvoor hé, vóór het proces. (...) Ze hadden daar zeker oren naar, de jury. Want ge voelde wel dat zij keken naar ons. (...) Ze hadden zo affiniteit naar ons toe. Naar ons werd gekeken. Hoe wij daar tegenover stonden. Dus het feit dat je er ook herstelbemiddeling, dat wij dat gedaan hadden, en dat onze ervaring daarin positief was, denk ik ook dat het wel een stukje daar, allé ja, zal bijgedragen hebben. (...) En die journalist (aanwezig op het proces) zei ook tegen mij "ik heb nog nooit zo'n proces meegemaakt", zegt hij, "het is precies een feel-good proces" (...) Ik had zo het gevoel dat hij wou zeggen, dat is een proces waarin iedereen zijn ding heeft kunnen zeggen en iedereen heeft dat daar ook begrepen*'.)

Another respondent wanted to deal with the events as informally and low profile as possible. He had not called the police to the scene, who had automatically filed a complaint because the events had taken place in public. The respondent explains that he was not disturbed or distressed by the events. He did not see himself as a victim and was of the opinion that what the offender had done (threatening him with a firearm) was stupid but no cause for prosecution. The VOM was ideal to settle the conflict and enable the victim and offender to go about their own business and be friendly to each other again.

> (Herman) '*I could have refused to cooperate (in VOM), but then it would go to trial and that's only just misery and judicial costs and whatnot. So I cooperated. (…) I had the chance to have a say, what I thought about it, that it was abnormal what (the offender) had done, but that I was not troubled afterwards whatsoever. (…) We just talked it out, there at the table, and we just solved everything. (…) You get a chance to talk it all out, the conflict. (…) Because when it goes to trial, the (conflict) actually never gets dealt with. Because what they do there, is the judicial decision, and that's where it ends. And, well, in that sense (mediation) is ideal, right*'.
>
> (Translated by the author from Dutch: '*Ik kon er ook wel niet aan meewerken, maar dan kwam het voor en dat is allemaal maar miserie en gerechtskosten en toestanden. Dus heb ik daaraan meegewerkt. (...) Heb ik mijne zeg kunnen doen dus, wat ik daarvan dacht, dat dat allemaal abnormaal was wat die gedaan had, maar dat ik daar totaal geen moeite naderhand mee had of zo (...). We hebben dat gewoon uitgepraat daar aan tafel en allemaal opgelost gewoon. (...) Ge krijgt de kans om uw conflict uit te praten. (...) Want als het voorkomt, wordt dat (conflict) eigenlijk nooit uitgesproken. Want dat doen ze daar, de uitspraak, en daar houdt het mee op. En, ja, dan is (bemiddeling) ideaal hé*'.)

The appreciation of the opportunity to solve the conflict and ease the tension corresponds with the appreciation of the restorative approach's flexibility (see 5.1.). For these seven respondents in particular, the restorative approach seems to stand for dealing with any informal issues they might have had, while the criminal justice system serves to deal with everything of a formal nature. The focus of both procedures is distinct, and the application of the restorative procedure does not necessarily replace the need for the judicial proceedings. They serve a different goal: the first one is needed to resolve or at least defuse the conflict between victim and offender, the second one to provide for a formal reaction to the crime. A judicial proceeding is still needed to address issues that can be dealt with in an administrative way. In short, the communication with the offender prior to the trial took the edge off, but it did not replace the judicial decision.

6.1.1.3. Integrating the restorative offer in the criminal justice system

What further distinguishes the respondents in the 'participation before adjudication' group from those in the 'participation after adjudication' group is the perception of the structural integration of the restorative approach in the entirety of proceedings they were involved in. Every respondent indicated having been aware of the formal and principal independence of the restorative intervention from the judicial procedures. In this regard, for instance, the respondents knew that a mediation agreement would not automatically imply the exoneration of the offender, or the reduction or exemption of a sentence. They understood that while they were mediating with the offender, the judicial proceedings continued their course, unaffected by the restorative intervention. But because of the simultaneous development of both procedures, be it independently from one another, the restorative and judicial procedures were experienced as interwoven.

Moreover, in ten cases the victim had been introduced to the restorative offer by the prosecutorial services or by the mediator after having been selected for mediation by the

prosecutor, which might reinforce the perception of integration. Two respondents, who had been directly invited by the prosecutor to partake in VOM, initially thought the restorative intervention was a supplementary and obligatory step in the judicial proceedings. The mediator evidently rectified this erroneous perception, in informing the victims upon their first encounter that participation was voluntary. Interestingly enough, they were not troubled should VOM have been obligatory because they saw it as a great opportunity to try and defuse the conflict with the offender before going to court. One of the two, furthermore, highlighted that having been invited to mediation by the prosecutor, gave it a sense of seriousness (even if it was only a standard letter), what he had much appreciated.

> (Yann) '*Finalement, j'ai reçu un courrier du procureur du roi de X, qui m'expliquait qu'il proposait une médiation réparatrice. (…) C'était en fait une suggestion du parquet. Et c'était bien. Parce que ça émanait une autorité, une autorité judiciaire. Moi je pensais même que c'était obligatoire dans les termes, tellement c'était bien formulé. (…) C'est bien que ça émane du… c'est une proposition du parquet, je pense que c'est bien. Ça faisait plus officiel!*'

In two other cases, the perception of the procedural integration was instigated by the fact that the respondents did not feel recuperated by the mediation service and the victim support services they were using at the same time. The cooperation between the mediation service, the victim services at the court ('*service d'accueil aux victimes*') and the psychosocial victim support service ('*service d'aide aux victimes*'), while respecting confidentiality regarding the interactions with their client and the content of the face-to-face meeting with the offender, was found to be very satisfactory. Such practice is again drawn up in the cooperation agreements between the different players in the Belgian field. These agreements organize the mutual references to the relevant services available to victims locally and nationally, protecting the client's confidentiality but also avoiding clients to be exclusive to certain services. All this seems to favour the perception of the services forming a coherent and supportive unit of services for their clients.

> (Olga) '*Actually, everything fitted well into the entirety (of services). (…) And also a good collaboration between the victim-offender mediation and victim support. (…) Yes, I have to say a fluent collaboration. Not like "this is my service and this is where it stops and I don't want to hear about the rest of it", no, a good collaboration. (…) Yes, the impact of this should surely not be underestimated, what it did for me and what it did for me being able to process everything. (…) If the mediation goes well, and then you go to trial, I think you're more able to cope with the trial, that it is easier to process, because if not, you'll be stuck with bitterness*'.
>
> (Translated by the author from Dutch: '*Eigenlijk, paste alles goed in het geheel. (...) En ook wel een goede wisselwerking tussen herstelbemiddeling en slachtofferhulp. (...) Ja, ik moet zeggen een vlotte samenwerking. Niet van "dat is hier mijn dienst en dat gaat tot hier en voor de rest moet ik niet weten", nee, dat was een vlotte samenwerking. (...) Ja, het is zeker niet te onderschatten wat dat betekent en wat dat doet voor u zelf en voor de verwerking daarvan. (...) (Als die herstelbemiddeling) goed loopt en ge hebt dan het proces, dan denk ik dat ge dat beter het proces aankunt, beter kunt verwerken terwijl dat je anders inderdaad met zo een wrang gevoel zit*'.)

In one interview it was even difficult to discern the respondent's observations regarding the criminal justice proceedings and the restorative intervention. The different procedures seemed to have spilled over into each other. It was practically impossible to distinguish between the contribution of VOM and of the criminal justice proceedings to the respondent's satisfaction. He indicated that every step had gone well, everyone had been friendly and helpful in getting their case dealt with and every actor involved had done a good job.

6.1.1.4. The restorative offer does not replace the need for a judicial trace

The restorative approach seems to have the capacity to blend in with the criminal justice procedures. However, the perception of integration does not apply as far as the outcome is concerned.

The majority of the respondents in the 'participation before adjudication' group (N=12) suggest that the restorative intervention remains a complement to the judicial procedures because the restorative outcome cannot replace a judicial decision. Two of them explain that they do not have the standards of what a just reaction to crime is and that only a judge has this knowledge and expertise. But even more importantly, each procedure serves a distinct purpose. The respondents situate the outcome of the restorative intervention on an informal level and the outcome of the judicial proceedings on a formal level.

> (Xander) 'I said (to the offender) *"you have put all these things in your intention plan (equivalent for a mediation agreement in an FGC), but now it is up to the judge to decide whether this suffices, it is not up to me to decide". (...) I cannot decide what sentence is to be given for what (the offender) did. Was it enough for me (the offender's intention plan)? Well, I find it hard to ... because there is no measure. How does one weigh this? (...) For me it was sufficient, because I've noticed afterwards that he had benefited from it*'.
>
> (Translated by the author from Dutch: '*Ik zei (tegen de dader) "nu, ge hebt dat vooropgesteld, nu is het aan de rechter om te oordelen of dat het volstaat of niet. Dat is niet meer aan mij". (...) (Het is niet aan mij) om te beslissen wat de straf is voor wat die doet. (...) Is dat voor mij voldoende? Ja, moeilijk om daar zo... want daar is geen maatstaf op te zetten. Hoe weeg je dat? (...) voor mij was dat voldoende omdat ik ook gezien heb achteraf dat die er iets heeft uitgehaald*'.)

Only for two of the fourteen respondents in the 'participation before adjudication' group the restorative outcome could have been sufficient. One respondent was not looking for a punishment or even for the offender to have a judicial record. He did not find a judicial response was necessary. He was therefore glad that the trial resulted in a suspended sentence, as he had requested in the mediation agreement added to the judicial file. A second respondent states that she would have asked the prosecutor to drop the charges, if only the respondent had not been lying during the face-to-face meeting and had accepted responsibility.

It is quite interesting to observe that seven respondents remark that, while they respected the need for a judicial response to the crime, their need for involvement and voice was sufficiently met in the restorative intervention. The intervention was also much more practical and convivial than the judicial trial. For them it was not the restorative intervention that complemented the judicial trial, but the trial that complemented the restorative intervention. A couple of these respondents even go as far as to describe the trial as a nuisance, an unnecessary burden and redundant (an observation that is more prevalent in the 'participation after adjudication' group; see 6.1.2.). Although these seven respondents respect the societal necessity for a formal reaction to their victimization, once the restorative intervention had complied with their needs for active involvement, defusing the conflict, and dealing with informal issues, the urge to assist in the audiences before the judge was simply reduced or undone. In this sense, participation in VOM replaced their participation in court, but the restorative outcome did not replace the need for a judicial decision. Also, it did not imply that victims did not want to be informed about the course of the judicial proceedings and outcome either.

> (Kirsten) '*All of a sudden I had 100 euro in my account (the amount the victim and offender had agreed on), and end of story. (...) I thought to myself, if I had had to go (to court), for me it was better that everything was resolved here*'.
>
> (Translated by the author from Dutch: '*Maar op een keer had ik toch 100 euro op mijn rekening staan en einde verhaal. (...) Ik dacht in mijn eigen, als ik zelf had moeten gaan (naar de rechtbank), voor mij zelf is het beter dat het hier opgelost wordt*'.)

> (Eve) '*For me the trial was less significant. For me the case was dealt with (in VOM). (...) I didn't need the trial anymore. For me that was just burdensome*.'
>
> (Translated by the author from Dutch: '*Het proces was voor mij maar een bijzaak. Voor mij was het al afgedaan (met VOM). (...) Voor mij hoefde dat proces niet meer. Voor mij was dat een last*'.)

Nonetheless, for the other half of the respondents participation (N=7) in the restorative intervention did not replace their need to be involved in the trial. The need to express themselves and to be considered did not evaporate with their participation in a restorative intervention. They were still looking for a position and status in the criminal trial as well, in the objective to be recognized rather than to influence the judicial decision and the sentence.

> (Olga) '*We had the chance to say everything we wanted at the trial. We could say everything, right. And we've always been involved, always been supported. And yes, that made that it was actually bearable for us, really*.'
>
> (Translated by the author from Dutch: '*We hebben echt alles kunnen zeggen ook op het proces Alles kunnen zeggen hé. En altijd erbij betrokken geweest, altijd ondersteund geweest. En ja, dat maakt dat het voor ons eigenlijk draaglijker is gewoon*'.)
>
> (Xander) '*I went (to the trial) twice, but it is, well, assembly line work, you know, unfortunately. (...) I'm not saying it was a negative experience, but, yeah, for me it seemed totally unnecessary that I was there. They were not empathic*'.
>
> (Translated by the author from Dutch: '*Ik ben zelf twee keer geweest, maar dat is, ja, bandwerk hé, spijtig genoeg. (...) Ik zeg niet dat dat een slechte ervaring was, maar, ja, dat was voor mij totaal onnodig dat ik daar geweest was. Ze waren daar niet empatisch*'.)

In other words, while for some the VOM procedure can replace the need for presence in the courtroom, other respondents were still looking for information and consideration in the criminal justice system. Also, the restorative outcome does not replace the need for a judicial reaction according to our respondents (with the exception of two respondents who had hoped the mediation could result in the suspension of punishment). The restorative intervention allows victims to address informal issues and the judicial proceedings to subsequently provide a formal reaction to the crime. It is noteworthy that the need for a judicial reaction to the crime, complementing the restorative outcome, is not synonymous with a need for punishment. A fair number of respondents (N=7) prefer for the offender to receive the most lenient punishment possible. The purpose of the judicial decision is the

formal recognition of the offender's accountability and of the victimization. The pertinence of a judicial reaction is described by one of the respondents as the need for a '*judicial trace*'. In other words, the degree of justice is not measured by the degree of punishment, but by the degree of recognition.

> (Yann) '*Il a quand même été cité devant le tribunal correctionnel, hein. Et je suis pour. (…) D'après les faits, ça n'a aucune utilité sociale qu'il ait en prison hein. (…) Je voulais simplement qu'il reconnaisse ce qu'il avait fait. (…) Et qu'il y a un procès. Parce que la médiation ne peut pas tout faire non plus. Le médiateur n'est pas un juge. Il doit concilier les parties, mais ce n'est pas à lui à imposer une sanction. (…) Le médiateur, pour moi, enfin c'est ma conception, il doit apaiser, et il doit essayer que les personnes puissent se concilier. Tandis que le juge est là pour faire inscrire notamment une sanction dans un casier judiciaire et une trace judiciaire. Donc c'est tout à fait différent et c'est tout à fait complémentaire*.'

6.1.1.5. Not an absent but an anticipated judicial decision

Furthermore, while we had expected that the absence of a judicial decision would influence the victims' appreciation of the restorative intervention prior to adjudication, this does not seem to be the case. Actually, the judicial reaction is only temporarily absent and is anticipated. All victims understood that a judge would have the final word in their case, and they appreciated that. They were not looking to be burdened with decision control and were satisfied with participation. The informal outcome of the restorative intervention needed to be complemented with a formal judicial decision, that only a judicial authority can take. Therefore, the judicial decision it not regarded as unavailable but is anticipated.

6.1.2. Victims' appreciation of the restorative intervention after adjudication

6.1.2.1. Victims' evaluation of the judicial proceedings

Most of the respondents in this group (N=8) indicated that they were not satisfied with the judicial proceedings. Only two of these respondents were in touch with the victims support services at the court, which they had much appreciated. The support they received here could, however, not make up for the negative elements in the judicial proceedings.

For the two VOE respondents' disappointment with regard to the criminal justice system was related to the outcome, *i.e.* the decision of non-prosecution, but also to procedural hiatuses. Although it was liberating for them to have finally denounced the sexual abuse, they had hoped that the offender would also have been formally held accountable. They wanted to take their case all the way. On top of that, one of them reports that she had the impression the prosecutor did not believe her, resulting in an overall negative evaluation of the criminal justice system. The other VOE respondent only received the decision of non-prosecution years after she had filed a complaint. She respected the fact that the prosecutorial services had to deal with more pressing and urgent cases than hers (concerning events that had taken place more than 15 years prior to her complaint), but the waiting time had made her very anxious. She was also given hope that her complaint would be eligible for prosecution. When she finally received the answer of the prosecutor, she was shocked and relapsed into a depression she thought she had finally conquered. As a result, she had to go back to therapy. Nonetheless, the willingness of the prosecutor to sit down with her and explain the decision was appreciated. This led to an undecided evaluation of the criminal justice system.

> (Danielle) '*C'était très stressante, l'attente, j'étais tellement stressée (…). Je voulais avoir des nouvelles. (…) Mon enquêteur me disait "oui, on va l'arrêter. On va l'interroger. Ça va super" (…). Je dis, "ah ben, c'est génial". Mais c'est ça, à la dernière minute, le procureur m'a téléphoné pour me dire "finalement, il y a rien à faire". Fait que là, j'étais vraiment bouleversée. (…) Je dis, "après 3 ans ?! ". Tu sais, ils m'ont donné comme de l'espoir. Ils me disaient qu'ils étaient là pour l'arrêter, et tout à coup, *baf*, "non, on a rien à faire". (…) Tout était fini*'.

Five respondents describe how the judicial actors had taken their case, depersonalized it and talked about the victim, for the victim and over the victim's head, leaving them feeling left out. The lack of voice and recognition was cause enough for a strong feeling of discontent.

> (Irma) '*Comme si j'étais handicapée, on est victime donc "on ne comprend rien". On a l'impression qu'on n'est pas apte à comprendre. (…) On parle pour nous, on fait tout pour nous. (...) On parle pour nous parce qu'on croit qu'on n'est plus capable de gérer. (…) C'est nos avocats qui vont parler pour nous, mais ils n'ont pas le même ressenti que nous. (…) On subi, on fait ce qu'on nous dit.*'

> (Vanessa) '*It was like there was a fight going on behind my back (in court; the victim and offender were each sitting on a bench in front of their lawyer, with their back to the lawyer while he was pleading) (…). And I thought to myself "look at me sitting here, what am I doing here anyway? You know you are talking about my life, right? (…) And I'm just sitting here and there is nothing I can do. I'm just sitting here like some sort of puppet on a string and you are all dancing around me and I'm just sitting here not knowing what to do"*'.
>
> (Translated by the author from Dutch: '*Dan was dat echt zo een gevecht achter mij (...) Dacht ik in mijn eigen "zie mij hier nu zitten. Voor wat ben ik nu eigenlijk gekomen? Jullie zijn wel over mijn leven bezig hé. (...) En ik zit hier en ik kan niks doen. Ik zit hier eigenlijk gelijk een soort van marionette-poppeke en ge danst rond mij rond en ik zit hier en ik weet niet wat doen"*'.)

Some of the negative signals regarding the criminal justice system are related to structurally imbedded elements, which inherently carry the potential of being victim-unfriendly. For instance, three respondents mention that they perceived the possibility for defence lawyers to postpone the trial as a stall tactic and as being in disregard of the victims' emotional state. Going to court and the prospect of being confronted with the offender in the courtroom demanded some emotional and moral preparation from the victim. As a result, when they hear that the trial and, consequently, the judicial decision are postponed on the request of the defence lawyer, after having prepared themselves, is evidently frustrating.

> (Fiona) '*Because I was a witness I couldn't sit in on the preliminary. (...) My family was in the courtroom. And you know, those three days, (...) you wait in anticipation of "is he going to walk out, or is he going to be (held) responsible?". On Friday afternoon I got this phone call from my sister and she was crying and I thought, "oh my god, he is not going to go to trial. He is going not to have to be responsible for this". But that wasn't the case. The defence attorney (...) had decided on the Friday afternoon (on the last day of the preliminary hearing) that he wanted to call one more witness. And the next date that the judge and the prosecutor and the defence attorney could be available, was five months later. I was devastated*'.
>
> (Catherine) '*We kept having stall after stall after stall in the trial (...) because (the offender) was using stall-tactics, him and his legal aid lawyer. (...) This legal aid lawyer was just drawing it out and drawing it out*'.

Furthermore, the lack of a physical place for the victim in the courtroom was cause for concern for four respondents. One victim remembers that she had to compete with the family of the offender for a seat in the courtroom. Also, the lack of a private room to use during the breaks is consternating. Victims had to either sit in the hallway or in a room they had to share with the offender or with the offender's relatives and supporters. This resulted in unwanted confrontations either with the anger of the offender's relatives towards the victim for having filed a complaint, or with their sadness for what the offender had done,

which was equally painful for the victim. This could have simply been avoided by providing the victims with a private waiting room.

> (Erin) '*When during the trial, the (offender's) siblings, that was so childish… . There was about ten of them. And (we) would be waiting in the waiting room there for the doors to open to the court. Of course (the offender's siblings) stand right in front of the door to be first in line. And then they would open the door they would all rush and get the front row seats, right. I thought like "here they are protecting their brother by being in the front row seat". I mentioned it to one of the victim service girls, and she mentioned it to the prosecutor. And because she said, "they are giving her a bunch of crap". Like all this stuff. And so, anyway, I thought, "well, I'm not going to let them…". (…) And I said to my daughter "just come with me, just come with me. Don't even ask questions what I'm going to do", she "what?!". And so we go to the door, and I got right in the middle of (the offender's siblings), right. We sat right in the front row seat in the middle of all of them. So I'd have loved to have had a camera at the judge and the prosecutor, like they looked and saw me sitting in the middle of them. (…) I mean, I didn't want to sit in the front row seat in the first place. I'd rather sit five rows back. But I thought, "okay, I just proved my point"*'.
>
> (Irma) '*Les victimes n'ont pas de place. Il y a pas de place. Parce qu'on est pas obligé d'y aller, je le sais, mais enfin bon. L'auteur, il a sa place. Il est prêt de son avocat. La victime, son avocat est bien loin, et il n'y a pas de banque pour elle. Elle trouvera une place si elle veut, mais c'est bien la preuve que nous n'existons quasi pas. (…) Il y avait pas un endroit pour se recueillir, il y a rien du tout. (…) Vous êtes là dans les émotions, vous sortez, ben, vous attendez dans les couloirs, on y est, tout le monde passe, et voilà. (…) Vous êtes dans la même, ben, pas forcement, dans la même salle que la famille de l'auteur. Vous sortez par la même porte, vous vous touchez. (…) Même pour la famille de l'auteur, parce que, bon, la famille de l'auteur n'est pas toujours responsable non plus. (…) Il y a pas d'endroit pour un peu d'intimité, pour de recueillement*'.

The use of cross-examination and subpoena's in the adversarial regime is another reason for frustration. Cross-examination was cause for revictimization. Three respondents, victims of sexual assault, felt put to the stand, attacked by the defence lawyer and awkward

for having to recount the details of the events in front of an audience. Having been subpoenaed to witness forced them into being involved and to testify and was out of their control. It also made victims feel responsible for the incriminating evidence and, hence, to the possibility to pursue or adjudicate the offender. They also highlight that they could not remember the exact dates and details, details that had often been repressed from their memory. In two cases, the incorrect memory of the exact dates led to the judge having to drop the charges (against the only offender or against one of the offenders). In other words, even though the evolution from a private to a State-led prosecution should principally have unloaded the victim of the burden of proof (Wright, 1996), in practice, victims can still sense this responsibility resting on their shoulders.

> (Catherine) '*It's the defence lawyers that are the bullies, the manipulators. Basically, I just call them "the dirty dogs". And they are the ones with no compassion. I know that they have to do it, it is part of their job, but there has got to be a better way to do it, you know*'.
>
> (Dana) '*The prosecutor, he kept rambling over how old was I in grade school, how old was I in high school. And the judge finally took him to task, and he said "you know what, she just said that ... why don't you just pay attention?!". (...) The charges (were dropped) on a technicality and the judge actually apologized to me and he said to me "Mrs, I'm really sorry (...). I believe your story and you're a very credible witness and I believe you told the truth and that what you said happened did happen to you and he did the things to you that you say he did. However, Crown has failed to proof how old you (were) and so the charges have to be dismissed on a technicality"*'.
>
> (Alma) '*Dans ma mémoire ça s'était mélangé. Pis (le procureur) a laissé tomber le dossier (contre un des agresseurs). (...) Il disait, vue que je m'avais trompé devant lui, il disait je pourrais me tromper devant au palais de justice. Je m'étais trompée dans les dates, pas dans les évènements. Puis il y a ça aussi, il devrait arrêter de nous demander les crimes de dates, et les années. Tu te fonds là-dedans après, ça risque tout. Tu peux pas tout le temps te rappeler quelle mois, telle date. Je disais, je me trompe pas dans les évènements, je me trompe dans les dates*'.

Two respondents found the prosecutor to have been quite disrespectful. One respondent had been taken aback by the negative attitude towards her during the investigation and at the trial. The prosecutor made it very clear to her that his role was not to defend the victim but to protect the state. When he interrogated her to build his case against the offender, she felt verbally aggressed by him, as if he questioned her and her statement. Even though she respected his role as representative of the State, she did not understand why he could not play his role in a more victim-friendly way. Another respondent describes how the prosecutor was only interested in putting up a show for the audience in the *Assises* courtroom, and in doing so showed absolutely no respect for the victim and his relatives, or for the offender. It felt as if both the victim and offender were being ridiculed.

> (Greta) '*I particularly had problems with that prosecutor, a showman. People thought he was funny, like "he puts up a show". It was particularly because of him that I was shocked. (...) The prosecutor said a lot of things that had nothing to do with the case. That was poignant. The members of the jury were laughing with (the prosecutor) at times. I don't think there is anything to laugh about at moments like those*'.
>
> (Translated by the author from Dutch: '*Ik had het meeste problemen met die procureur, ne showman. De mensen vonden dat geestig, zo van "hij maakt er iets van". Het was vooral door hem dat ik geshockeerd was. (...) De procureur heeft vele dingen gezegd die er niet bij hoorden. Dat was schrijnend. De juryleden zaten daar bij momenten mee te lachen. Op zulke momenten valt er niet te lachen, vind ik*').

In other words, the criminal justice system can be very demanding. Victims are looking for a formal response to crime, but they do not want it at any price (Lemonne, Van Camp & Vanfraechem, 2007). The criminal justice system relies on the victim to protect the society, but when in its course the victim gets revictimized, the system is flawed.

A number of respondents (N=3) had, fortunately, not felt recuperated or revictimized and evaluated the criminal justice system positively. They had felt included, treated with respect and had much appreciated the opportunity to express themselves (at least towards the

judicial authorities). They were particularly satisfied with the respectful interactions with the judicial actors. Two of them were also in touch with victim support in court. The trial had still been quite confrontational and emotionally burdening, but the support and respect from the judicial authorities and victim support services was able to prevent this from negatively evaluating the criminal justice system and its actors.

> (Simon) '*Je ne sais pas si ça se fait comme ça chaque fois qu'il y a un procès, mais bon le climat qui y était, était effectivement chaleureux. (...) Les indications concernant le procès, les procédures pendant la semaine, c'était vraiment impeccable, il y a rien à dire*'.

The interactional justice was not always enough to avoid a negative evaluation of the system, however. Three respondents mention the encouraging and respectful contact with the judicial actors, but the impact of the unfavourable procedural aspects could not be outweighed in their evaluation of the judicial proceedings. Hence, the actors did not fail them, the system did.

> (Catherine) '*You know like the people in the system were fantastic, it was the system itself that failed me in my opinion*'.

6.1.2.2. Filling in the blanks left by the criminal justice proceedings with the restorative intervention

Respondents in the 'participation after adjudication' group seem to have accepted or initiated the restorative intervention to make up for what had frustrated them in the criminal justice system, be it the lack of recognition and respect or the lack of opportunity to express their concerns and emotions. Even the respondents who had been satisfied with the criminal justice proceedings and treatment, still needed to talk to the offender. There are some specific needs that can only be met in a restorative approach, no matter how satisfactory the criminal justice proceedings or the treatment by the judicial actors might have been.

> (Fiona) '*I decided that if he was found guilty, I was going to be better. I was going to be all better. It was going to be good. But … that feeling didn't… . Because, you know what, that guilty verdict, it never changed a thing for us*'.

Nine respondents wanted to make up for the lack of voice in the criminal justice system (which is also denounced as incorrect and disrespectful by respondents in the 'participation before adjudication' group). It is highlighted that only in the restorative intervention respondents were able to find their place as a victim, and had the opportunity to express their emotions and concerns and to be heard.

> (Irma, whose child was killed) '*En tant que maman (…), ça c'est personnel. Je l'ai eu qu'une fois (pendant la VOM). Et j'aurais voulu pouvoir m'exprimer plus souvent en tant que maman. (…) Parce que avant d'être victime, je suis maman*. (…) *J'ai pu cracher, j'ai pu m'exprimer. (L'auteur) m'a écouté, il a compris des choses et moi j'ai compris des choses*'.

Nine respondents described the need to ask the offender questions and to know the truth. The judicial file and trial had not clarified what had exactly happened or what the offender's motives had been. The respondents needed that information in order to move on. The trial did not permit the same comprehension of the events as the dialogue with the offender did. In order for the offender to tell the truth, an informal setting was essential.

> (Rita) '*Sans la médiation nous on aurait pas su de toute façon, pour connaître vraiment la vérité. Oui, ça a été la porte ouverte. (...) (L'auteur) n'a pas pété un mot. Au tribunal on sait rien. En plus, (il) disait rien du tout, il a rien dit. Tout le temps de sa préventive, il a gardé le silence. Au tribunal il a gardé le silence, tout ça pour protéger son ami. (...) Savoir (...) mettre un nom sur celui qui avait orchestré (le cambriolage qui résultait dans du violence physique sévère). Une fois qu'il est condamné, il peut se permettre de le dire. "C'est moi qui a orchestré", ou "c'est pas moi". Mais au tribunal il ne va pas le dire. (...) Si on veut savoir les choses, il faut aller les chercher hein. Si on ne va pas chercher soi-même ce qu'on veut savoir, on ne le saura jamais hein*.'

Two respondents, both having lost a teenage child, explained how they wanted to tell the offender about his victim, to let him know who the victim was, and what he had meant for his relatives. They showed a photo of the victim to the offender during the face-to-face meeting and described the impact of the loss of the victim on their family and friends. One respondent felt the prosecutor had already done an excellent job in describing her child in a very respectful and personal manner, even though he had never known him personally. The other respondent, however, had been hurt by the depersonalization of the case during the trial and needed to rectify this herself by talking about her murdered child to the offender.

> (Irma) '*Juste avant de partir, j'ai pris des photos, vite quelques photos comme ça. Mais sans vraiment réfléchir. Et puis il y avait une photo de (mon enfant), il doit avoir quatre ans, avec un nez rouge de clown. Et alors, je ai montré cette photo (à l'auteur) et j'ai dit "regarde, ça c'est le bébé", j'ai dit "tu vois ce petit enfant ? C'est celui que tu as tué". Et ben, il me paraît que*

> *ça l'a très fort perturbé. Et j'ai dit, "chaque fois que tu vois un cirque où il y a un clown, c'est (mon enfant) que tu verras". (…) Je ne veux pas non plus qu'il souffre, loin de là. Mais je ce que je lui ai dit, "je veux bien que tous les jours, pendant cinq minutes, tu penses à (mon enfant)*"'.

As demonstrated before, three respondents had been troubled by the lack of voice for the offender in the courtroom, and initiated VOM to allow the offender to tell his story and to support him (see 5.4.2.). One respondent was only able to move on after she had been able to tell the offender personally that she forgave him.

The two VOE respondents, whose offenders were not prosecuted following their complaint, considered the restorative intervention to have been able to provide them with some sense of justice. It was not quite the same as having been able to bring their offender before a judge, and to have the offender held formally accountable, but the opportunity to describe the impact of victimization to offenders who had committed similar offences, have these offenders recognize the seriousness of the consequences and liberate the victims from their feelings of guilt and shame, was empowering. These respondents felt that they had given themselves a chance of some sort of justice after their chance for formal justice had been denied to them. They would have preferred that their own offenders had been prosecuted, and the VOE did not annihilate this need entirely, but it managed to fill a void.

> (Christa) '*Pour moi la justice aurait été qu'il aurait été condamné. (…) (Mais suite à VISA) je ne porte plus ce poids sur mes épaules, pour moi c'est la justice . (…) VISA, moi c'était comme pour fermer cette boucle là pour ensuite passer à autre chose. (…) Je me suis donnée la justice à ma façon*'.

Finally, one respondent explains that the sentencing of the offender had not brought closure. The offender might have been formally held accountable but he needed to hear

from the victim directly how the victimization had impacted her. Only if the offender accepted responsibility, justice was done.

> (Catherine) '*Yes, (in the trial) I got vindication, but it was not justice in my opinion. (…) What I got out of (the face-to-face with the offender) that meant the most to me was the fact that (the offender) acknowledged what he did to me for the very first time*'.

6.1.2.3. A strict distinction between restorative and judicial procedures

As opposed to the respondents in the 'participation before adjudication' group, the respondents who partook in a restorative intervention after adjudication strictly distinguish between the restorative and judicial procedures, not only on an outcome level, but also on a procedural level. For them, one has nothing to do with the other. Both procedures serve a distinct purpose. Even the Canadian respondents who had been informed about the possibility of mediation by the National Parole Board (N=3) disconnected the restorative intervention from the criminal justice proceedings. Because of frustrations emerging from the judicial proceedings, or because of some specific needs that could not be met in the criminal justice system, the respondents took a final step hoping that this would bring closure and respond to their needs that were unmet in the criminal justice system. Moreover, only in one case an agreement resulting from the mediation was added to the offender's file in the hope that it would serve the offender when applying for parole. In none of the other cases the respondents had further expectations towards the criminal justice system because the judicial file was closed. The restorative intervention was perceived as a necessary personal, final step, unrelated of the judicial proceedings.

6.2. The relation between the restorative intervention and the criminal justice proceedings

The observations just described can also be used to reveal the victims' perception on the relation between the restorative interventions and the judicial proceedings. We can first of all deduce that the restorative intervention is perceived and appreciated as a complementary procedure to the judicial proceedings. Secondly, we found that the overall assessment of the criminal justice proceedings differed relative to when the restorative intervention had been used. It seems that participation in a restorative intervention before adjudication can positively influence the evaluation of the criminal justice system.

6.2.1. The restorative intervention as a valuable complement before and after adjudication

While the motivation to participate in a restorative intervention might differ relative to its timing, in both groups the restorative intervention is appreciated because of its complementary nature in relation to the criminal justice proceedings, regardless of its timing. As indicated above, for some respondents participation in the restorative intervention prior to the trial made their need for presence in the courtroom less urgent, but not for others. For most, the opportunity for voice in one procedure could not replace the need for voice in the other procedure. The opportunity to have expressed themselves towards the offender prior to the trial did not replace the need to be heard by the judicial authorities and vice versa.

It seems only normal that any additional intervention that is focussed on putting the victim and offender central and that gives the victim process control over the resolution of the

conflict, without there being any formal consequences attached, must be satisfactory. But, the complementary nature of the restorative offer appears to be a factor for satisfaction in itself. The fact that there is no pressure to take a decision and to solve the problem might be important in itself. It is exactly the idea that victims are involved without being burdened with decision-making power that adds to their satisfaction with the restorative offer. It is also consistent with their expectations towards the criminal justice system, to which they turn for a societal and formal recognition of their victimization, of the violence committed against them and of the offender's accountability.

Whether or not they wanted to be actively involved in the judicial proceedings, wanted to attend the court hearings or wanted to present a statement in court or at the parole board, respondents were still looking for a formal decision or respected the societal need for it. While the restorative intervention served to deal with informal issues related to the victimization, the criminal justice proceedings served to formally hold the offender accountable. Even if the restorative intervention was perceived as having blended in with the judicial proceedings, the respondents explained that both procedures serve different purposes. Regardless of when the restorative intervention was used, it was about conciliation, about holding the offender informally accountable and about resolving informal issues. The criminal justice proceedings were about the holding the offender formally accountable. Moreover, the fact that it left a judicial trace was more important than punishment.

The suggestion that a restorative intervention is only complementary to the criminal justice proceedings, and should remain so, at least as far as violent crimes are concerned, indicates that, even if victim-participants are very satisfied with the restorative approach, they do not wish to abolish the criminal justice system. However, it would not hurt to make the criminal justice proceedings and their executions more victim-friendly, on the contrary, but there is a need for a formal, societal reaction to violent crime, which can only be

established by a judicial authority in a formal setting. This can surely count as an argument in the ongoing debate on the position of the restorative practices with regard to the criminal justice system (see 1.1.1.3.).

6.2.2. The appreciation of the judicial proceedings in relation to the timing of the restorative intervention

What the comparison of the two groups of respondents relative to the timing of the application of the restorative intervention demonstrates is that the appreciation of the restorative approach is positive in both the pre- and post-adjudication group. While all the respondents positively evaluate the restorative intervention, irrespective of its timing in the judicial proceedings, only half of the respondents positively evaluate the criminal justice proceedings (see 4.3.1.). Of those who evaluated it positively, eight took part in the restorative intervention before adjudication. Of those who evaluated it negatively, eight were involved in a restorative intervention after adjudication.

Table 5. Distribution of the positive and negative evaluation of the criminal justice system

	Participation in RJ before adjudication	**Participation in RJ after adjudication**
Positive evaluation CJS	8	3
Negative evaluation CJS	4	8
Undecided evaluation of CJS	1	2
Not involved in criminal justice proceedings (yet)	1	1

In other words, the evaluation of the restorative intervention does not seem to be coloured by having been preceded or not by the finalization of the criminal justice proceedings. Our

observations rather suggest that the evaluation of the judicial proceedings might have been coloured by having been preceded by a restorative intervention.

This could mean that participation in a restorative intervention prior to adjudication can have a positive influence on the evaluation of the judicial proceedings. Because of an insight into the events and motives acquired through the communication with the offender prior to the trial, the victims in the 'participation before adjudication' group felt emotionally and intellectually prepared for the criminal trial. The system might still have been perceived as impersonal and cold, but experiences with the restorative intervention preceding the trial might have had a positive impact on the perceptions on the criminal justice system.

Evidently, even if the restorative intervention preceded the criminal trial and adjudication, the restorative procedure only started after a complaint was filed and judicial action had been initiated. The judicial investigatory activities continued their course parallel to the restorative intervention. It was not a matter of a cut and dry chronology of procedures, but of the two procedures following a parallel but independent course. The judicial proceedings were not put on hold by the restorative procedure and vice versa. They developed simultaneously. But, the mediation procedure could intellectually and emotionally prepare victims for what came next in the judicial proceedings. There were no surprises or shock as far as the motives and details of the events were concerned.

Six respondents in the 'participation before adjudication' group mention that they did not know the judicial decision (yet). This could make for an incomplete evaluation. We also need to note that of the fourteen respondents in the 'participation before adjudication' group, thirteen were Belgian. Belgian victims can also initiate other participatory rights prior to the trial, such as studying the judicial file. They can even ask for the presence of an assistant of the victim service at the court (*service d'acceuil aux victimes*) when studying

the judicial file. Three of the thirteen Belgian respondents in he ‘participation before adjudication’ group made use of this right. Hence, other favourable, victim-oriented factors might have also played their part in the positive evaluation of the criminal justice system, but our set of data does not allow discerning their role from the role of the restorative intervention.

In contrast, in the ‘participation after adjudication’ group the majority of the respondents (N=8) negatively evaluated the criminal justice system. It seems as if the respondents in this group went looking for a way to make up for what they had disliked or what they missed in the judicial proceedings. They did not have all the answers they needed, they felt they did not know the whole truth, they had not sufficiently been able to express themselves or to be heard by the offender, they felt the offender had to know their story and to hear it directly from them, or they wanted to support the offender and offer him forgiveness. In a number of cases (N=8) the role attributed to participation in the restorative intervention seems to be mainly related to concern the need for healing or empowerment. These victims found themselves left with unresolved issues, which prevented them from moving on. Closure required a confrontation and interaction with the offender. The potential therapeutic impact of the communication with the offender that the respondents in the ‘participation before adjudication’ group might have needed and experienced very early on in their personal recovery process, was maybe rather implicitly accounted for. It was more explicitly sought after by these eight respondents to whom the restorative offer had only been introduced after adjudication, many years after the victimization had taken place.

Furthermore, the respondents in the ‘participation after adjudication’ group do not associate the restorative intervention with the criminal justice system. Also, maybe due to this strong distinction, the satisfaction and sense of justice resulting from the restorative intervention does not rectify or soften the discontent with the criminal justice proceedings, as it seems to do in the ‘participation before adjudication’ group.

6.3. Summary

The application of restorative interventions before adjudication appears to be equally pertinent as its more common application after adjudication. In both stages it is positively evaluated. There are specific reasons for appreciating the restorative intervention relative to its timing, such as feeling prepared for the trial and the opportunity to defuse the conflict prior to the trial when applied before adjudication or filling in the blanks left by the judicial proceedings when applied after adjudication. It can therefore, be offered both before and after adjudication. Not every victim is able to confront their offender before adjudication but others cannot wait to meet their offender in a private setting until the judicial decision has been taken.

Unlike what we had expected, we found that the absence of a judicial decision did not seem to influence the appreciation of the restorative intervention prior to the completion of the judicial proceedings. A judicial decision was always anticipated. Respondents understood from the start that the judge would have the final word in the file, and they appreciated the offer for it.

It was not so much the overall evaluation of the restorative intervention that seemed to be coloured by its timing in the criminal justice proceedings, but the evaluation of the judicial proceedings that might have been impacted by having been preceded or followed by a restorative intervention. Possibly and partly because they felt emotionally and intellectually prepared for the trial and had been able to ease the tension with the offender, the respondents who participated in a restorative intervention prior to the trial seem to have been less troubled by the negative elements in the criminal justice proceedings than the respondents who partook in a restorative intervention. The latter seem to have accepted or initiated the restorative intervention to make up for what was lacking in the judicial proceedings. Nevertheless, also victims who partook in a restorative intervention before

adjudication suggest making the criminal justice proceedings more victim-friendly. Further research could clarify the relation between the timing of restorative practices in the criminal justice system and the impact on the assessment of criminal justice proceedings.

Finally, the respondents suggest maintaining the restorative interventions as a complement to judicial proceedings. One procedure does not replace the other because both serve different purposes. The restorative intervention allows addressing issues of a more informal and interpersonal nature, while the judicial proceedings serve to hold the offender formally accountable for the victimization. Irrespective of the satisfaction with the restorative intervention in responding to their needs, victims are still looking for a judicial reaction to the crime and for consideration in the criminal justice system. They are not necessarily looking for punishment but for recognition of the victimization and the offender's accountability. In any case, even if their need for participation was complied with in the restorative intervention, the respondents also needed a place in the criminal justice system. This again implies the importance of a victim-friendly approach in the criminal justice proceedings. The relevance of these observations for the further development of victim policy will be addressed in the following and final chapter.

7. Conclusions and recommendations

In this final chapter we will first resume the key findings in response to the three research objectives (7.1.). We will then outline to what extent our findings contribute to the procedural justice (7.2.) and restorative justice theory (7.3). Finally, we will consider the implications of our findings for restorative justice policy and victim policy (7.4.).

7.1. Responding to the research objectives

7.1.1. On the relevance of the procedural justice model to explain victims' satisfaction with the restorative approach

We explored the relevance of the procedural justice model to explain the apparent satisfaction of victims of violent crime with restorative interventions, such as VOM, VOE and FGC. Procedural justice appears to be an important aspect of restorative justice.

We found that the restorative procedure matters, irrespective of its outcome. The favourability of the restorative procedure seemed to cushion the negative effect of an unfavourable outcome. What is more, the respondents reporting a negative outcome, such as not getting answers to their questions, the reluctance of the offender to accept responsibility or the lack of a written and signed agreement, attribute the negative outcome to the offender. They do not indicate any other reason, *e.g.* related to procedural aspects of the restorative intervention or the treatment by the mediator, for the negative outcome but the lack of effort and honesty of the offender. This makes for a very remarkable illustration of the cushion of support idea developed within the procedural justice model.

Moreover, the procedural fairness determinant labelled ‘voice’ or ‘process control’ was especially prevalent in our data. In the restorative intervention, victims found an opportunity for involvement as well as an opportunity to describe the consequences of the crime, express their emotions and concerns, and reconfirm the societal values infracted by the offender. The finding that victims strongly value voice fits with Van den Bos’ (1996) conclusion that voice is the most consistent finding in procedural justice research.

The importance of voice further suggests that victim satisfaction is not simply a result of self-selection bias (Latimer, Dowden & Muise, 2005). Not only do victims choose whether or not they want to participate in a restorative intervention, within the restorative approach they also have many choices. It is this control over the procedure that victims cherish.

In addition, our respondents clearly valued the respect and recognition they received in the restorative approach. Our respondents were looking for recognition of their victimization and the offender’s responsibility. Such recognition was sought from the offender and the mediator, but also from the judicial actors and the community. Recognition was described as validating. Even victims who met with surrogate offenders, who apologized to the victims for the harm done to them by their own offenders or who explained that what happened was their offender’s responsibility and that the victim was not to blame, felt recognized and validated. The need for recognition corresponds with looking for a value and standing in the group, which is central in the relational justice motive, which explains the importance of procedural fairness. Other researchers have described similar findings on the importance of recognition. Shapland *et al.* (2007) covered the importance of the offender’s apology for victims in their study of restorative justice schemes in the UK. Strang *et al.* (2006) observed that victims were looking for the offender to understand the harm he had caused and to accept responsibility. Victims wanted to address this need prior to wanting to talk about compensation.

Our findings further suggest that the quality of the treatment by the mediator was important for the victims' appreciation of the restorative intervention. The mediators' approach was described as highly personalized and informal, while also being professional. This observation is in line with the findings of Wemmers and Cyr (2004, 2006b). They found that victims of crime, committed by juvenile offenders, had strongly appreciated the opportunity for voice and involvement in VOM, but equally valued a sympathetic treatment by the mediator. Furthermore, our respondents described how, in their interactions with the victims, the mediators prepared victims for the face-to-face meeting with the offender. Concretely, they helped shape realistic expectations about the general course of the intervention, the potential outcome as well as the attitude of the offender. The finding concerning the importance of preparation concurs with Shapland *et al.*'s (2007), who demonstrated that the preparation by the mediator and the readiness of the mediator to explain the process and potential outcomes played a part in victim satisfaction. Strang and Sherman (2003) concluded that the perception of having been well informed about the process impacted the victims' fairness judgements.

In one specific restorative intervention victim satisfaction is clearly more about the process than about the outcome. As it seems, VOE have been less about conflict resolution than VOM or FGC were. This is not surprising since victims in VOE do not confront their own offender. The VOE respondents did not disclose the aggression to the police, did not want to confront their offender or were denied prosecution, and could hence only vicariously address the conflict, *i.e.* by communicating with surrogate offenders. Also, VOE were less related to concrete, measurable outcomes than VOM. The VOE respondents were mainly focussed on the therapeutic impact of the interaction with surrogate offenders. Victims accepted the VOE because it could help them move forward in their healing process and they did not want to refuse the tools offered to them by their support workers. They were driven by their desire to find closure and were ready to do whatever it took to heal. Since the procedural justice model is concerned with the fairness of conflict resolution procedures, VOE might at first sight not seem to fit very well with this model. However,

the prevalent need for recognition expressed by these respondents concurs with the justice motive underlying the procedural justice model, *i.e.* to find confirmation of one's standing in the community. The observations regarding the need for recognition as well as regarding the importance of voice are pertinent and serve to validate parallels between the VOE and the procedural justice theory.

In sum, procedural fairness is a big part of victim satisfaction with restorative interventions. We acknowledge that '*(j)ustice theories, although abstract, are not as general or comprehensive as the laws of physics. Instead, like many social science theories, they are midrange theories with contingent explanatory power* (Clayton & Opotow, 2003, p.298)'. But within the limits of our research, the procedural justice model fits quite comfortably with our respondents' experiences and is a necessary, although insufficient, explanation for victims' satisfaction with the restorative approach.

7.1.2. The restorative approach moving beyond mere procedural fairness

After finding that the procedural justice model offers insight into the satisfaction of victims of violent crime with the restorative approach, we went on to demonstrate that there is even more to restorative justice than mere compliance to the procedural fairness theory. Apart from the restorative approach being perceived as fair, our respondents clarified that they had also appreciated the restorative approach for its flexibility, the care offered by the mediator, the focus on dialogue, and the opportunity to do something for the society or for the offender. These elements are not accounted for by the procedural justice theory.

Respondents mentioned their appreciation for the flexibility of the restorative approach. Victims do not only appreciate the restorative approach for being informal and maximizing their involvement and process control, as predicted by the procedural justice model. They also appreciate it for accommodating various specific needs and being responsive to the

victim's individual timing. The restorative approach leaves room for an individualized application, without endangering its neutrality or unbiased application and without reducing the offenders' rights and needs. Because of its flexibility, victims were able to get what they were looking for, whether it was getting compensation, closure, resolving interpersonal issues or to deal with the situation as informal and quick as possible. Shapland *et al.* (2007) also found that victim participants indicate different reasons for participation in a restorative intervention, such as wanting to express their feelings and ask questions or looking for compensation. While the procedural fairness model and its notion of process control only account for the importance of participation and involvement, the flexibility in restorative practices, as described by our respondents, accounts for the quality to adapt the procedure to fit the victims' specific needs, timing and discretion. Their ability to be reshaped and reinvented by the individual participants makes restorative interventions interesting and satisfactory (Shapland *et al.*, 2006).

The role of the mediator was found to be key, as has also been suggested by Umbreit (1989 and 1994) and Shapland *et al.* (2007). Mediators do not only inform participants about the procedure and what to expect and facilitate the actual conflict resolution process. They are also perceived as playing a caring role. Restorative interventions are appreciated for the emotional preparation for the eventual face-to-face meeting with the offender, as well as for the care from the mediator. Mediators were not mistaken for psychosocial support workers, but victims appreciated their emotional support throughout the entire procedure and their ability to recognize and respect the victims' needs. The restorative approach then becomes more than just a procedure for conflict resolution, but a source for care.

The importance of dialogue further distinguishes the restorative approach from mere applications of procedural fairness. While voice in the procedural justice model is conceptualized as static and unidirectional, dialogue, which is key in the restorative intervention, is dynamic and bi-directional. The appreciation for the restorative approach was not only related to having had the chance to present their point of view and issues; the

victims liked the opportunity to interact about these issues with the offender. Victims did not only want to ask questions; they wanted immediate responses as well as the opportunity to directly respond back. They did not only want to express their emotions and describe the consequences of victimization, they wanted to see the reaction of the offender to their story in order to ensure that the offender understood the seriousness of the consequences and, as a result, to efficiently raise victim awareness. As such, the dialogue was an end in itself. The importance of interaction with the offender is also highlighted by Strang *et al.* (2006) in their study on the relevance of the interaction ritual model to explain the therapeutic impact of face-to-face restorative justice models on victims. They found that victims presented reduced fear and anger following the confrontation with their offender and concluded that the interaction with the offender was key to this emotional reparation.

Finally, our respondents mentioned prosocial justice motives for their participation in the restorative intervention, which have been overlooked in the procedural justice model as far as interpersonal conflicts are concerned. Thibaut and Walker (1975 and 1978) focused on the disputants' self-interest, in the form of optimal control. But even the group-value or relational model does not account for selfless motives. While Lind and Tyler (1988) introduced the group-value model to replace the instrumental self-interest with a normative justice motive, it essentially values the view that people are concerned about their personal status in the group and not necessarily the well-being of the group. Our respondents accepted or even sought the role of contributing to a better society by raising the offender's victim awareness or by supporting and forgiving the offender. A similar observation was made by Shapland *et al.* (2007) in their evaluation of restorative practices in the UK, including minor and serious offences committed by juvenile or adult offenders. To this end, the interaction with the offenders proved again to be important. Only in the interaction with the offenders, victims could verify whether the offenders understood the message of victim awareness the victims were trying to convey to them.

7.1.3. On victims' appreciation of the restorative intervention relative to its timing in the criminal justice system

Finally, we examined the victims' appreciation of the restorative approach relative to its application before and after judicial adjudication. The observations made in this regard allow us to contribute to the debate on the position of restorative justice in the criminal justice system.

We found that restorative interventions, regardless of whether they were used before or after adjudication, were positively evaluated. The respondents having participated in a restorative intervention before adjudication explained that they felt well prepared for the trial because they had gained a good insight in the events and the offender's motives and had been able to defuse the conflict prior to the trial. All the while, these respondents had been aware that a judge would have the final word and appreciated that they were not responsible for the judicial decision. The absence of the judicial decision did not seem to influence the appreciation of the restorative intervention. The judicial decision was anticipated and therefore, the victims did not feel burdened with decision-control, which they appreciated. Victims who participated in a restorative intervention after adjudication appreciated it because it filled in the blanks left by the judicial proceedings, such as getting to know the truth, getting all the answers needed and holding the offender accountable.

While victims' appreciation of the restorative approach did not differ relative to its timing, victims' appreciation of the criminal justice system did vary relative to having been preceded or followed by a restorative intervention. Shapland *et al.* (2007) found that participation in a restorative intervention had a positive effect on victims' confidence in the criminal justice system and victims' satisfaction with judicial proceedings, but their sample only included victims who participated in restorative interventions following the offender's conviction (although including pre- and post-sentence applications). We found that

participation in a restorative intervention prior to the trial is associated with a favourable perception of the judicial proceedings, while participation following the trial is associated with an unfavourable perception of the criminal justice system. We observed that the respondents who participated in a restorative intervention in the pre-adjudication phase perceived the intervention as being integrated in the criminal justice proceedings. The different procedures were complementary and together formed a coherent entity. At the same time, these respondents highlight that each procedure served a particular purpose, implying that each procedure was necessary. The victims who participated in a restorative intervention after adjudication dissociate the restorative intervention from the criminal justice system. Their participation in the restorative intervention did not soften the negative perception of the criminal justice system.

What the respondents were quite adamant about is that restorative interventions are a valuable additional intervention and that they should remain only complementary. There are two hypotheses that can explain this preference for complementarity. Either, victims are satisfied with the complementary nature of restorative justice because it responds to the victims' need for restorative justice to be complementary and a judicial response to crime, or, victims appreciate the complementary nature because the practice was consistent with the information they had received about the complementarity of the restorative intervention prior to its execution. Our findings suggest that victims want the intervention to be complementary. They want to the criminal justice system to be involved in their search for a judicial trace. This is also in line with Wemmers and Cyr's (2004) conclusion that what victims are looking for in restorative justice is process control, but not decision control. Voice is not synonymous with decision control. It is exactly its complementarity that allows restorative justice to be informal and flexible. In Belgium and Canada the restorative practices under examination have been designed to be complementary rather than diversionary. Our respondents simply agree with this view because it meets their needs for a formal response to crime.

Consequently, participation in a restorative intervention does not replace the need to be heard and considered by the judicial authorities. The recognition of the responsibility by the offender in the restorative context, does not replace the need for the offender to be held accountable by a judge. Regardless of whether the victims reported negative or positive experiences with the criminal justice system, they all respected the need for a societal response to crime and for the offender to be held publicly accountable. That is not to say that they would object to the judicial decision-maker taking the restorative outcomes into account, as long as the judicial authority carries the final decision-making responsibility. In any case, the informal outcome of the restorative intervention has to be complemented with a formal response from the authorities. It was a judicial trace, serving the purpose of the recognition of the offender's responsibility, that the respondents were after. They wanted the offender to be held accountable and the offender to accept his responsibility.

Hence, our findings strongly suggest that, at least in cases of violent crime, the restorative intervention is complementary to the judicial proceedings, regardless of whether it is applied before or after adjudication and regardless of its outcome. The restorative and judicial proceedings can take place simultaneously, each following their own course, independently and unhindered by the developments made in either procedure. This view concurs with the dual-track model in Van Ness' (2002) typology. In this concept, the restorative approach and the judicial proceedings co-exist independently, while there are bridges between the two systems to allow parties travelling from one to the other.

7.1.4. Limits

The respondents in our sample are all victims of violent crime who initiated or accepted the invitation for a restorative intervention. Further research could be done to verify the relevance of our observations with regard to victims of non-violent crime and their experiences with restorative justice.

It is impossible to provide a profile for victims, who participated in a restorative intervention, but refused to be part of our study. The response ratio to the invitation for an interview, extended by restorative services, is unknown to us. Out of respect for their privacy, we did not ask the mediators to provide information about victims who refused the interview. We do not know whether these victims were satisfied or dissatisfied with the restorative intervention and for what reason.

Furthermore, some of the recruiters did not randomly select respondents from their clientele. Instead, they approached clients whom they considered to be ready for an interview. The deontological code of some of the participating services also only allows contacting clients with whom there is ongoing contact. Since we were looking for victim-participants whose file had been closed, this deontological principle implies that the referred respondents were not just privileged witnesses of the restorative approach, but victims who continued to be affiliated with the restorative service. This could have impacted our findings, but should also be considered as an inevitable bias. We could and would not bend the deontological rules for the purpose of our study.

In a qualitative study the validity of the research sample is based on empirical or theoretical saturation of the findings, rather than on the representativeness of the sample. Nevertheless, one group that seems overrepresented in the sample are victims who knew the offender prior to the victimization, which might create the impression that the restorative approach is particularly suitable or acceptable for victims who know the offender. However, this overrepresentation can be explained by our focus on victims of violence, representing criminal acts that are in about half of the cases committed by someone known to the victim (family member, friend, acquaintance or other) according to the International Victimization Survey (Van Dijk, Van Kesteren & Smith, 2007) or in most of the violent crime cases according to Canadian statistics (Gannon & Mihorean, 2005). The appreciation of the restorative approach did not differ for victims that knew the offender and those that did not. What did differ was the specific content of their questions towards the offender, which

refers to the importance of the flexibility of the restorative approach to allow victims to direct the content of the conversation. It does not make voice more or less important for victims according to their relationship with the offender prior to the events. Another group that might be overrepresented in our sample are women. The annual reports provided by Suggnomé, the forum for restorative justice and victim-offender mediation in Flanders report that slightly over half of the victim-participants in their restorative programs are men (Suggnomé, 2005; 2006; 2007; 2008; 2009; 2010). Nevertheless, we mainly reached women for an interview, which could present a limit to our findings. One might argue that this could explain the importance of emotion-expressive voice, for instance. However, it does not imply that particularly women are interested in the restorative approach or appreciate it because of the opportunity for voice. Moreover, both the men and women in our sample referred to the importance of descriptive, emotion-expressive and value-expressive voice as a factor for satisfaction with the restorative approach. Nonetheless, it would certainly be interesting to verify the potential impact of gender on satisfaction with the restorative approach in future research.

7.2. Contribution to the procedural justice model

Tyler, one of the leading procedural justice scholars, is the first to admit that there are still quite some inconsistencies in the procedural justice model, even after decades of empirical research and theoretical development (Blader & Tyler, 2003). The model can still handle some improvement. According to Cohen (2001) research on restorative justice can inspire scholars to improve procedural fairness as a theoretical model. We found that procedural fairness partially explains the victims' satisfaction with the restorative approach. Restorative justice also moves beyond the procedural justice model in being flexible, providing care, facilitating dialogue and the opportunity to address altruistic motives. The question is then whether this means that the procedural justice model needs to be adapted to

incorporate these new elements or whether flexibility, care, dialogue and altruistic motives are unique to restorative justice and distinguish restorative justice from procedural justice.

Our answer is that flexibility, care, dialogue and addressing altruistic motives are unique to restorative justice and do not have to be integrated in the procedural justice model. The restorative approach is not only concerned with conflict resolution, as is procedural justice, but also with care and accommodating various needs that are not necessarily related to a measurable outcome or reparation. It is specifically through dialogue that these various needs, on an individual or on a prosocial level, can be addressed, *e.g.* questions get answered, the offender accepts responsibility and victim awareness is raised. Restorative justice is not just a good application of procedural justice. It has a quality that is not related to procedural justice and surpasses the objective of the procedural justice model to identify what makes a conflict resolution procedure fair and how this procedure reflects on the disputant's standing in the society.

Our contribution to the procedural justice theory concerns the interactional dimension. In the procedural justice literature there is some debate concerning the different dimensions procedural justice consists of. Some, like Blader and Tyler (2003), argue that procedural justice includes both the quality of the procedure and the quality of interactions. Others, like Bies (2001) and Colquitt (2001), argue that interactional justice should be distinguished from procedural justice. The nature of our data does not permit stating whether or not the interactional dimension should be recognized as independent rather than being absorbed by the procedural justice model. However, our respondents attributed great importance to this dimension. The interaction with the mediator and judicial actors were a key part of the appreciation of the different procedures. The assimilation of interactional justice with procedural justice might not do the interactional dimension justice. The independence of the interactional dimension should be further investigated.

7.3. Contribution to the restorative justice theory

One of the issues in the ongoing debate on the definition of restorative justice concerns the relative importance of outcome and process (see 1.1.1.3). Our observations on how victim-participants perceive the restorative approach, suggest that the definition of restorative justice should refer to the relevance of both procedure and outcome. It is clear that victims attribute importance to procedural factors inherent to restorative interventions, be it the ones accounted for in the procedural fairness model or those unique to restorative justice. The quality of the execution of the restorative procedure can even function as a cushion for the negative impact of an unfavourable outcome on the overall assessment of the intervention. This does not imply, however, that the restorative outcome is unimportant. Our respondents only indicated that different restorative outcomes can be sought after, ranging from measurable to less tangible outcomes, and that disappointment in an unfavourable outcome can be softened because victims felt involved, respected and heard. Moreover, the restorative outcome depends on the offender's effort and engagement and can therefore be assessed irrespective of the procedure and the treatment of the mediator.

In the definition of restorative justice, the conceptualization of the restorative outcome could be opened up. The current definitions of restorative justice tend to focus on a restricted description of reparation, such as material and symbolic reparation. Our findings suggest that victims are also looking for recognition and the truth. Recognition of his responsibility by the offender is a key aspect of justice for victims. As suggested by Van Ness and Heetderks-Strong (1997), the link between justice and accountability should be key in the definition of restorative justice. The definition of restorative justice should further allow a variety of outcomes from concrete reparation and agreements to more abstract outcomes, such as getting insight in the events and the offender's motives, and outcomes that cannot be directly measured by the victim-participant, such as raising the offender's victim awareness and the offender's recognition of responsibility. Inspiration

can be found in supranational law on victim policy and victims' rights. The UN resolution on the Basic Principles and Guidelines on the Right to a Remedy for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law of 2005, for instance, includes different meanings of reparation: restitution, compensation, rehabilitation, satisfaction, full disclosure of the truth, public apology and guarantees of non-repetition. This reflects the suggestions made by our respondents regarding the restorative outcome.

Furthermore, dialogue is central. The value of the dialogue between the victim and the offender, irrespective of the victims' objective and irrespective of whether they met their own offender or surrogate offenders, is hard to misinterpret. It is an end in itself. In centring on communication, the definition of restorative justice should include room for different ways to communicate, *e.g.* direct or indirect communication. In line with McCold and Wachtel's (2000) suggestion for a continuum of fully to partly restorative practices, different possible interventions centring on communication and conciliation are possible. Basically, the definition should leave room for the choice of individual participants as to how they want to be involved.

In order to respect the reality of restorative practices, restorative justice needs a dynamic definition, which reflects its flexibility. In line with Shapland *et al.* (2006) who demonstrated that every participant brings his ideas of justice to the table and that the content of the restorative intervention is formed accordingly, we would also suggest to enable the definition of restorative justice to reflect its flexibility and its operationalization by the individual participants. The actual meaning of reparation depends on the individual participants' needs and expectations and could thus be defined by the individual participants. Victims appreciated the opportunity to choose how far they wanted to go, how much and what kind of support they needed, what motives and objectives they wished to respond to, ranging from self-interest to prosocial motives, and what role they wanted to play.

7.4. Implications for policy development

7.4.1. Implications for restorative justice policy

Our respondents' strong appreciation of restorative interventions encourages the expansion of the restorative offer and its application in cases of violence. Both the Belgian and Canadian victims of violence in our sample positively evaluated the restorative approach. They described similar reasons for their general appreciation of the restorative practices, irrespective of their timing in the judicial proceedings. The restorative interventions were found to be procedurally fair and to have a unique quality in answering victims' needs.

Respondents further suggested that the restorative interventions should be maintained as complements to the judicial procedures. The restorative and judicial procedures complement rather than replace each other because they serve different purposes. Whether they had gone through the inquisitorial or adversarial adjudicatory proceedings, the victims in our sample explained that the restorative procedure served personal, informal and often less tangible purposes, while the judicial procedures served formal and societal purposes. One procedure cannot replace the other; both are needed. However, that does not imply that the judicial proceedings could and should not be improved to better respond to victims' needs (see 7.4.2.).

While we did not compare the experiences of victims of violent crime with restorative interventions in relation to their experiences in the inquisitorial or adversarial regime, we did compare their experiences with restorative practices relative to their timing in the judicial proceedings. The restorative approach was found to be satisfactory both before and after adjudication. The positive experiences described by the respondents who participated in a restorative intervention before a judicial decision was taken, sometimes only a couple of months after the aggression took place, are immensely encouraging for the expansion of

the restorative offer to every stage in the criminal justice system. There is no need to wait with the offer until after penal adjudication. Restorative justice can be offered prior to adjudication or after. This recommendation is directed towards Canada, where to date, victims of violent crime can only initiate VOM after the judicial trial has been finalized. On the condition that the offer is voluntary and non-diversionary, it is opportune to offer Canadian victims of violence the possibility to participate in VOM even before a judge has passed a judgment in their file (instead of only being allowed to participate in VOE). Victims would then be given the choice to accept or refuse the offer, and even to revise their initial refusal in a later stage, *e.g.* after adjudication. It is the victim's timing that is important. Also, '*(a) restorative justice process situated within criminal justice can rarely be sensitive to the stage the victim had reached (…). It may be that for serious offences, in fact, restorative justice may need to be offered to the parties at several points subsequent to the offence* (Shapland *et al.*, 2006, p.519)'. Information about the different possible steps then becomes key and allows victims to make an informed choice for participation in the restorative approach.

Our findings also reveal that when a confrontation with one's own offender is not possible, because the crime had not been denounced to the police, the offender has not been caught or arrested, the offender is unwilling to participate or the victim is too afraid to confront the offender, VOE are a valuable alternative. The sense of recognition and the opportunity to have a dialogue with surrogate offenders in the VOE was described as validating and healing. This is again an indication of the importance of the flexibility of the restorative offer to accommodate various needs and specific situations, but also of VOE to be recognized as restorative and satisfactory.

The restorative services are much dependent on referrals from other services. Therefore, for the expansion of restorative practices and the introduction of the restorative offer to victims of crime, cooperation between restorative and other services victims get in touch with is vital. There are several initiatives already in place to ensure referrals to mediation services.

For instance, when Canadian victims register at the National Victim Service Program at the CSC, to receive information on, for instance, court dates and parole, a right provided under the *Corrections and Conditional Release Act*, they are informed about services available to them, including the Restorative Opportunities program run by the CSC. Similarly, in Belgium, in the documents victims receive from the police, information about the different services, such as mediation services, is included. Other comparable initiatives are in the pipeline in Belgium (see 2.2.). However, more active referrals, other than merely mentioning the mediation services on standardized forms, will also be needed.

Victim support workers, for instance, can play a role in informing and referring their clients to restorative services. Victim support workers therefore need to be familiar with the offer and its positive impact in order to feel comfortable to actually refer clients. An encouraging observation for the expansion of the offer to victims of violent crime and the cooperation of victim support workers is the victims' perception of restorative interventions as a service to victims. The mediator is perceived as providing care. Mediators have to be and are able to deal with emotional and psychological issues, even if only to recognize these issues and refer victim-participants to more specialized services. The victims in our sample confirmed that they felt well supported by the mediator. They felt very well prepared for the eventual face-to-face meeting, for which the offender in turn had also been prepared. As a result, the face-to-face confrontations went well. The perception of the caring role of the mediator also counters the concern of victim support workers that victims might be used in favour of the offender to get a lenient sentence. Furthermore, our respondents described the multiple opportunities to pause and adapt the procedure to their timing and individual recovery process. In other words, there is no evidence to support victims support workers' fear for re-victimization in restorative justice. Also, victims are interested in it (Wemmers & Canuto, 2002). It is the criminal justice system that is found to be re-victimizing (Daly, 2004). Restorative programs then become more attractive and less problematic in potentially causing secondary stress.

However, not all victims, even of violent crime, find their way to the victim support services. As a matter of fact, only a minority do (Van Dijk, Van Kesteren & Smit, 2007). Also, victims support services are often dealing with the most vulnerable victims (Goodey, 2000), who might not be ready or interested to consider participation in a restorative intervention. Moreover, victims who disclose the crime to the police and the criminal justice system, look to the judicial actors for information and recognition. Therefore, judicial actors could play a central role in referring victims to the restorative offer. The cooperation with judicial actors, as referring agents, is equally important as the cooperation between restorative and victim support services. In other words, the actual application of the restorative justice policies does not only depend on victim support workers, but also on the acceptance of this new, complementary resource by the judicial authorities.

We acknowledge, with Gavrielides (2007), that the restorative justice logic is neither adversarial (*i.e.* restorative justice is not confrontational in nature but favours dialogue) nor inquisitorial (*i.e.* restorative justice is not an instrument of adjudication; the truth can of course emerge from the dialogue between victim and offender but this cannot be used as evidence before a judge). Nevertheless, restorative justice cannot be dissociated from the criminal justice system. Even if the restorative intervention is seen as complementary rather than diversionary, the link with the criminal justice system is unavoidable, especially when the restorative offer is used before adjudication. Participation in a restorative intervention before adjudication does not imply the dismissal of the judicial case or the avoidance of a judicial trial. The restorative and judicial proceedings develop simultaneously and the experiences in both can be perceived as integrated, as indicated by our respondents. The different procedures can be seen as different, necessary and complementary steps on the way to closure. Even in a dual-track type of relation between the restorative offer and the criminal justice system, as described by Van Ness (2002) and as preferred by our respondents, there is a link between the restorative offer and the criminal justice system.

Hence, despite operating outside of the criminal justice system, restorative justice cannot be detached from the criminal justice system because it needs referrals from the judicial actors. Judicial actors are key referring agents. This is what Noreau (2003) labels a dependent institutionalization. Restorative justice as an innovative practice can be integrated in the daily, established practice of judicial actors as a valuable complement to judicial proceedings. However, the criminal justice system (whether adversarial or inquisitorial for that matter) seems to have the capacity to absorb reform projects and transform new policies to fit with its conventional logic, making it almost impossible to reach the initial aims adopted in the reform policy (Clear, 2004). Upon implementation, policies can be altered, undone of their initial goals and given new, more practical goals, or changed in contrast with an idealized practice, referred to as instrumentalization or cooptation (Kaminski *et al.*, 2001). In order to safeguard the complementary nature of the restorative approach and to protect it from being recuperated in the established, retributive logic of the criminal justice system and to encourage judicial actors to see the restorative offer as a viable, complementary option, Noreau (2003) further highlights that the dependent institutionalization has to be preceded by an autonomous institutionalization, *i.e.* the independent crystallisation and formalisation of the restorative practice outside the criminal justice system. This requires the restorative practice to be normalized, formalized, legitimized and professionalized. If positive and encouraging experiences can be presented to judicial actors with regard to the solution of social issues, including crime, outside the conventional criminal justice system, they might be inspired to accept it and refer victims. It was, for instance, highlighted by our respondents that they had perceived the restorative service as professional, despite the high level of informality and conviviality. The availability of an umbrella organization, such as Suggnomé, Médiante, the OSBJ and Arpège assembling mediators in Belgium or the Restorative Justice Department at the CSC organizing the Restorative Opportunities program in Canada, play an important role to ensure such good practice and service to victims. The organization of seminars and regular feedback meetings serve the maintenance of a good practice, the support of the mediators, professionalism and the respect for deontological rules.

The development of a legal framework for restorative justice could in this sense also instigate referrals to the restorative services. In Belgium, mediation services had already managed to establish themselves in the criminal justice field when they helped design the law of 2005 on the general offer of mediation in order to get the restorative practice institutionalized and generalized. In other words, the practice had found its place in the field through a bottom-up or grassroots approach, but a legal framework, in which the complementarity and informality of the approach are respected, was developed to ensure its place and the cooperation with judicial actors. In Canada, there is to date no specific legal framework for restorative practices. If there would be one, it would relieve the restorative offer from its current, erroneous link with the laws on alternative measures.

Then again, the restorative justice organizations in Belgium remark that despite the availability of a legal framework for restorative justice, the application of restorative practices in some judicial districts remains limited (Suggnomé, 2007). They estimate that the relatively low number of referrals is not related to the saturation of their clientele but to the manner in which victims and offenders are informed about the offer or to the lack of information on the restorative offer (see 2.2.2.). Hence, even if there would be a law on restorative practices in Canada, the institutionalization of restorative practices would still require the willingness of potential referring agents to inform their clients about it. If not, the law is an empty shell. This is the case for the introduction of any innovative practice in the criminal justice system (Brienen & Hoegen, 2000; Kaminski *et al.*, 2001; Noreau, 2003; Aertsen & Peters, 2003; Clear, 2004). Attitudes and cultural reform might be more important for change than law reform is.

7.4.2. Implications for victim policy and the criminal justice system

Restorative interventions were perceived as procedurally fair and satisfactory. They contribute in a unique way to meeting victims' needs. However, we do not expect every victim to be willing to accept the restorative option. Moreover, the victims of violence suggested that the restorative intervention is only a complement to the judicial proceedings. Consequently, involvement and voice in the restorative intervention does not erase the need to be involved and heard in the judicial proceedings, no matter how satisfactory the restorative intervention might have been. Therefore, the need to be involved and to be heard should not be restricted to the restorative offer, but should also be responded to in the judicial proceedings (Wemmers & Cyr, 2004). Victims are not only looking for procedural fairness in restorative justice, but also in the criminal justice system. Our respondents did not want to abolish the criminal justice system but they did want to make it more victim-friendly, *i.e.* by making it comply better with the procedural justice theory and by improving the quality of the interaction with the judicial authorities. Such observations indicate that investment is not only needed to expand and implement restorative interventions, but also to improve the criminal justice system and give it a more victim-friendly allure.

Participatory rights for victims have been the subject of debate and have not been fully accepted by certain criminal justice scholars and practitioners (see for instance Ashworth, 2002). It has been suggested that victims' rights would impede the offenders' rights and a fair process and would lead to harsher punishment. The reluctance to include victims in the criminal justice proceedings could explain the insufficient enforcement of victim rights (Erez & Rogers, 1999; Roberts & Erez, 2004; Doak, 2005; Doak & O'Mahony, 2006). However, the image of the punitive victim is false (Fattah, 2000; Orth, 2002). Our findings suggest that the victims' need for participation is not a threat to the rights of the accused.

Through participation, victims are looking for recognition of their victimization and of the offender's responsibility, which is not synonymous with retribution. As pointed out by Umbreit (1989), victims are looking for justice instead of revenge. In the criminal justice system, victims are in the first place looking for recognition of their victimization and for the formal recognition of the offender's responsibility. This should not be confused with the mechanism of plea-bargaining, in which the offender confirms the charges and recognizes his responsibility in exchange for a more lenient sentence. The victim is not involved in these negotiations. Plea-bargaining has therefore been labelled as unfair and shameful by Fattah (2004). The recognition victims are looking for is unconditional, but not synonymous with retribution. What is more, the victims in our sample demonstrated altruistic motives as well. In other words, there is no reason to be '*afraid of the big bad victim*' (Erez, 1999). The criminal justice system could be changed in this regard: the focus on punishment could be replaced with the focus on accountability. What starts with the introduction of restorative practices as complements can then possibly have a positive, changing impact on the entire criminal justice system, gradually moving away from the focus on retribution towards the focus on accountability (Aertsen & Peters, 2003).

Despite many victim-oriented changes, such as the introduction of the VIS in the Canadian criminal justice system and victim participatory rights in the Belgian criminal justice system, there is still a long way to go to make both systems victim-friendly. Many victims still felt their needs were insufficiently met in the criminal justice system. They indicated the lack of information about their file and the steps to follow, they felt lost in the bureaucratic proceedings, they felt they were treated disrespectfully. They felt excluded and deprived of involvement in the judicial proceedings. Importantly, victims do not ask to dominate the process, but to be recognized and to be heard. They feel these needs are not unreasonable or illegitimate (Shapland, Willmore & Duff, 1985).

Essentially, victims would like to feel more at ease in the criminal justice proceedings and are looking for sensitivity to their cause and needs. Going to court is in itself enough cause

for anxiety. According to Herman (2003), while victims are only trying to establish empowerment, '*the court requires them to submit to a complex set of rules and procedures that they may not understand, and over which they have no control. Victims need an opportunity to tell their stories in their own way, in a setting of their own choice; the court requires them to respond to a set of yes-or-no questions that break down any personal attempt to construct a coherent and meaningful narrative* (Herman, 2003, p. 159-160)'. The high formality of the court proceedings confounds the victim's stress. In other words, while victims are looking for a formal response to the crime and a formal procedure (Lind *et al.*, 1989), this does not have to be done at the expense of the interactional justice they are also looking for. Victims much appreciate good interpersonal interactions with judicial authorities.

Sensitivity and interactional justice can be achieved with small but significant gestures. A prosecutor who takes the time to meet with the victim and explain the proceedings and potential outcomes is appreciated. It also sends a message to the victim that their case is being treated seriously and with attention to their need for information and involvement (Lemonne, Van Camp & Vanfraechem, 2007). Reserving a seat for the victim in the courtroom and preparing a private room where victims can wait during the trial breaks can be helpful. Victims are not looking to impose themselves, but to be considered and treated with respect.

Furthermore, an outreach of the available services to all victims is needed. Victims are insufficiently aware of the services available to them. Consequently, the victim services need to actively approach the victims, and not wait for the victims to find their way to these services. Victims are known to not actively request services and support (Maguire, 1991; Shapland, 2005). For instance, the victim support services at the courts were found to be important. They are available to assist and inform victims about the general course of the judicial procedures. They do so in an informal and personalized manner. However, not all our respondents were aware of the existence of such victim support services in court. If one

were to promote an improved victim policy, one might want to invest in the awareness regarding the services offered in court as well. Victims are generally overwhelmed by the criminal justice system and do not usually find their way to the support services on their own.

The importance of an outreach approach also counts for the restorative services. Our respondents noted that the restorative offer is too little known, and therefore restricts its accessibility. Those who had been introduced to it by a prosecutor or contacted directly by the mediator had much appreciated such proactive approach. Whether the restorative offer is available before or after adjudication, it seems that our respondents would rather know all of their options and have the opportunity to refuse the offer, should they wish, than not know the services available to them.

7.5. General conclusion

We found that restorative justice is more than procedural justice. The restorative procedure and interpersonal interactions with the mediator were important aspects of the victims' satisfaction with the restorative intervention. Besides being perceived as procedurally fair, the restorative approach has the quality to be flexible, provide care, and centre on dialogue as well as address altruistic justice motives. The restorative approach was described as satisfactory whether it was applied before or after adjudication, whether it involved the victim's own offender or a surrogate offender, and whether it involved face-to-face communication or shuttle mediation.

Moreover, whether the criminal justice system was perceived as fair or unfair, victims liked the restorative intervention as a complementary measure to the criminal justice proceedings, before or after adjudication. The restorative and judicial proceedings serve different purposes and cannot replace each other. This finding implies that victims of

violence are not only looking for procedural and interactional fairness in the restorative approach, but also in the criminal justice system.

The justice motive underlying this search for procedural fairness is related to the victims' need for recognition of their victimization and the offender's responsibility. Justice for victims, whether addressed in the restorative approach or in the criminal justice system, begins with holding the offender accountable, because fairness is recognition and recognition is restorative.

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Omzendbrief nr. COL 5/2009 van het College van Procureurs-generaal bij de hoven van beroep betreffende het gebruik van eenvormige attesten van klachtneerlegging,

richtlijnen inzake de overhandiging van deze attesten door de politiediensten en wijziging van de COL 8/2005

Annex 1. List of respondents (pseudonyms)

No	Pseudo-nyms	Nationa-lity	Type of crime	Direct or indirect victim	Relation to offender prior to victimi-zation	Age offender at moment of offence	Type of RJ	Timing of RJ
1	**Annette**	Canadian	Incest	Direct	Known	Adult	VOE	Before adj.
2	**Bernard**	Canadian	Physical assault	Direct	Unknown	Juvenile	VOM	Does not remember
3	**Christa**	Canadian	Incest	Direct	Known	Adult	VOE	After adj.
4	**Danielle**	Canadian	Incest	Direct	Known	Juvenile	VOE	After adj.
5	**Eve**	Belgian	Murder of child	Indirect	Known	Adult	VOM	Before adj.
6	**Frankie**	Belgian	Physical assault (with weapon)	Direct	Unknown	Adult	VOM	Parallel to trial
7	**Greta**	Belgian	Murder of family member	Indirect	Unknown	Adult	VOM	After adj.
8	**Herman**	Belgian	Threat with firearm	Direct	Known	Adult	VOM	Before adj.
9	**Irma**	Belgian	Man-slaughter of child	Indirect	Unknown	Juvenile	VOM	After adj.
10	**Jeanne**	Belgian	Stalking	Direct	Known	Adult	VOM	Before adj.
11	**Kirsten**	Belgian	Physical assault (with weapon)	Direct	Unknown	Adult	VOM	Before adj.
12	**Larry**	Belgian	Physical assault	Direct	Known	Adult	VOM	Before adj.
13	**Michel**	Belgian	Threat with knife	Direct	Known	Adult	VOM	Before adj.
14	**Norma**	Belgian	Fraud	Direct	Unknown	Adult	VOM	Does not remember

No	Pseudo-nyms	Nationa-lity	Type of crime	Direct or indirect victim	Relation to offender prior to victimi-zation	Age offender at moment of offence	Type of RJ	Timing of RJ
15	**Olga**	Belgian	Murder of parent	Indirect	Known	Adult	VOM	Before adj.
16	**Petra**	Belgian	Murder of parent	Indirect	Known	Adult	VOM	Before adj.
17	**Quinten**	Belgian	Physical assault	Direct	Unknown	Juvenile	VOM	Before adj.
18	**Rita**	Belgian	Home invasion (parents)	Indirect	Unknown	Adult	VOM	After adj.
19	**Simon**	Belgian	Man-slaughter of family member	Indirect	Unknown	Adult	VOM	After adj.
20	**Ursula**	Belgian	Robbery	Direct	Unknown	Juvenile	FGC	Before adj.
21	**Vanessa**	Belgian	Arson	Direct	Known	Adult	VOM	After adj.
22	**Winona**	Belgian	Physical assault	Direct	Known	Adult	VOM	Before adj.
23	**Xander**	Belgian	Physical assault	Direct	Unknown	Juvenile	FGC	Before adj.
24	**Yann**	Belgian	Physical assault	Direct	Known	Adult	VOM	Before adj.
25	**Zara**	Belgian	Murder of parent	Indirect	Known	Adult	VOM	After adj.
26	**Alma**	Canadian	Incest	Direct	Known	Adult	VOM	After adj.
27	**Burt**	Canadian	Incest and rape	Direct	Known	Juvenile	VOE	No complaint filed
28	**Catherine**	Canadian	Incest	Direct	Known	Adult	VOM	After adj.
29	**Dana**	Canadian	Sexual abuse	Direct	Known	Adult	VOM	After adj.
30	**Erin**	Canadian	Murder of child	Indirect	Known	Adult	VOM	After adj.
31	**Fiona**	Canadian	Man-slaughter of child	Indirect	Unknown	Adult	VOM	After adj.

No	Pseudo-nyms	Nationa-lity	Type of crime	Direct or indirect victim	Relation to offender prior to victimi-zation	Age offender at moment of offence	Type of RJ	Timing of RJ
32	**Ginny**	Canadian	Incest and rape	Direct	Known	Juvenile	VOE	No complaint filed
33	**Helga**	Canadian	Murder of sibling	Indirect	Unknown	Adult	VOM	After adj.
34	**Ines**	Canadian	Murder	Collateral victim	Known	Adult	VOE	No trial due to decease offender at scene

Annex 2. General sample overview

N	34
Age	Average age of 47 Between 23 and 74
Gender	25 women 9 men
Nationality	21 Belgian 13 Canadian
Education	1 primary school degree 13 secondary school degree 14 higher educational degree (other than university degree) 5 university degree (1 unknown educational degree)
Type of offence	11 murder/manslaughter cases 8 physical assault cases 7 incest case 2 threat with weapon case 1 home invasion 1 robbery 1 fraud 1 sexual abuse, not incestuous, case 1 arson case 1 stalking case
Type of restorative intervention	26 VOM 6 VOE 2 FGC
Direct or indirect victim	22 direct victim 11 indirect victim 1 collateral victim
Relation to offender prior to victimization	21 offender known 13 offender unknown
Age of own offender at moment of offence	26 adult offenders 8 juvenile offenders

Annex 3. Pre- and post-adjudication comparison groups

	Before adjudication group **N= 14**	**After adjudication group** **N=14**
Age	Average age of 47 Between 23 and 72	Average age of 47 Between 26 and 74
Gender	8 women 6 men	13 women 1 man
Nationality	13 Belgian 1 Canadian	6 Belgian 8 Canadian
Education	2 primary school degree 5 secondary school degree 7 higher educational degree	- 4 secondary school degree 10 higher education degree
Type of offence	6 physical assault 3 murder/manslaughter 1 incest 1 stalking 1 robbery 2 threat with weapon	1 home invasion 7 murder/manslaughter 4 incest 1 sexual abuse 1 arson
Type of restorative intervention	11 VOM 2 FGC 1 VOE	12 VOM 2 VOE
Direct or indirect victim	11 direct 3 indirect	6 direct 8 indirect
Relation to offender prior to victimization	10 offender known 4 offender unknown	8 offender known 6 offender unknown
Age of own offender at moment of offence	11 adult offenders 3 juvenile offenders	12 adult offenders 2 juvenile offender

Annex 4. Invitation letter

Montreal, December 10th 2008

Concerns: participation to research project conducted by Tinneke Van Camp, University of Montreal.

Dear Madam, Dear Sir,

I am a Ph.D. student at the University of Montreal and am currently doing research on the perception of justice and the criminal justice system by individuals that have been affected by a criminal offence. I would like to meet you and know your perception of the judicial procedures and of the criminal justice system. This study will allow an accurate insight on the issues and concerns of individuals that have been affected by a criminal offence. With your participation in this study, you will contribute to the optimization of the treatment for those affected by crime in the criminal justice system.

If you wish to participate to an interview in the framework of this research project, you should sign the consent form attached to this letter. This consent form ensures that your participation is voluntary, that any information given by you during the interview is confidential and that you will remain anonymous.

There are three ways to contact me if you wish to participate :

(1) You can send the **signed consent form and your contact information** (address, phone number or e-mail address) **by mail** to:

✉ Tinneke Van Camp, School of criminology, University of Montreal, C.P. 6128, Succ. Centre-ville, Montreal (Québec) H3C 3J7

(2) You can also contact me **by e-mail or phone** before sending me the signed consent form by mail or signing it at the start of the interview.

☎ …
@ …

OR

(3) If you wish to participate, you can also contact Mr./Mrs X and give him/her permission to send me your contact information. I can then call you to make an appointment.

☎ …. (toll free)
@ ….

Kind regards,

Tinneke Van Camp
Ph.D. student
University of Montreal

Montréal, 10 décembre 2008

Objet : participation à la recherche de Tinneke Van Camp, Université de Montréal.

Madame, Monsieur,

Je suis une candidate au doctorat à l'Université de Montréal et je fais une recherche sur la perception de justice des personnes ayant été affectées par un acte criminel. Je voudrais vous rencontrer et connaître votre perception sur les démarches judiciaires et sur la justice. Votre participation à cette étude permettrait de mieux connaître les intérêts des personnes qui, comme vous, ont vécu de près ou de loin les effets de la criminalité. Ainsi, en participant à cette étude, vous contribuerez à l'optimisation de l'assistance et du traitement des dites personnes au sein du système judiciaire.

Si vous souhaitez participer à ma recherche, sous la forme d'une entrevue, je vous demanderais de signer le formulaire de consentement ci-joint. En le signant, vous confirmez que votre participation est volontaire, et que vous avez été informé-e du caractère confidentiel et anonyme de votre contribution.

Pour me faire part de votre désir de participer à cette recherche, vous pouvez choisir parmi les trois façons suivantes, la procédure qui vous convient le mieux :

(1) Vous pouvez envoyer le **formulaire de consentement signé ainsi que vos coordonnées** (adresse, numéro de téléphone ou adresse courrielle) **par la poste** à :

✉ Tinneke Van Camp, École de criminologie, Université de Montréal, C.P. 6128, Succ. Centre-ville, Montréal (Québec) H3C 3J7

(2) Vous pouvez aussi me contacter **par courriel ou par téléphone** avant de me faire parvenir le formulaire de consentement par la poste ou de me le donner au moment de l'entrevue.

☎ … (appel gratuit)
@ …

OU

(3) Enfin, vous pouvez également **contacter** Mr./Mme X du service de médiation pour l'autoriser à me transmettre vos coordonnées de manière à ce que je puisse vous contacter et prendre un rendez-vous.

☎ ….
@ ….

En vous remerciant à l'avance de la considération que vous porterez à ce projet, veuillez recevoir Madame, Monsieur, mes plus cordiales salutations,

Tinneke Van Camp
Candidate au doctorat
Université de Montréal

Montréal, 8 januari 2009

Betreft: deelname aan onderzoek van Tinneke Van Camp, Universiteit van Montréal, Canada.

Geachte Mevrouw, Meneer,

Ik ben een Belgische doctoraatsstudent aan de Universiteit van Montreal en ik verricht momenteel een onderzoek naar de perceptie van rechtvaardigheid bij personen getroffen door een misdrijf. Ik zou u daarom graag ontmoeten en uw perceptie van de gerechtelijke procedures en systeem kennen. Uw deelname aan het onderzoek verhoogt het inzicht in de behoeften van personen getroffen door een misdrijf. Op die manier draagt uw deelname aan het interview bij tot het kunnen geven van een goede bijstand aan deze personen in het rechtssysteem.

Als u bereid bent deel te nemen aan een gesprek in het kader van dit onderzoek, zou ik u willen vragen het instemmingsformulier, dat aan deze brief werd toegevoegd, te ondertekenen. In dit instemmingsformulier wordt benadrukt dat uw deelname aan het onderzoek vrijwillig is, dat alle informatie die u aan de onderzoeker geeft vertrouwelijk is en dat u anoniem blijft.

Indien u wenst deel te nemen aan het onderzoek, kan u me op één van de drie volgende manieren bereiken :

(1) U kan **ondertekende instemmingsformulier en uw contactgegevens** (adres, telefoonnummer of e-mailadres) **per post** opsturen naar mij :

✉ Tinneke Van Camp, School of criminology, University of Montreal, C.P. 6128, Succ. Centre-ville, Montreal (Québec) H3C 3J7

(2) U kan mij ook contacteren **per e-mail** vooraleer mij het instemmingsformulier op te sturen of het te tekenen bij de start van het interview.

@ …

OF

(3) U kan ook contact opnemen met Mevr/Mr X van de bemiddelingsdienst waarmee u reeds contact had, en hem/haar toestemming geven om uw contactgegevens aan mij door te geven. Op die manier kan ik u vervolgens zelf contacteren om een afspraak te maken.

☎ ….
@ ….

Met vriendelijke groet,

Tinneke Van Camp

Doctoraatsstudent
Universiteit van Montréal

Annex 5. Consent form

Title of the study: The perception of justice by individuals that have been affected by a criminal offence
Researcher: Tinneke Van Camp, Ph.D. student, School of Criminology, University of Montreal, Quebec
Supervisor: Jo-Anne Wemmers, Doctor in Criminology, Professor, School of Criminology, University of Montreal, Quebec

A) INFORMATION FOR RESPONDENTS

1. Research objective

The purpose of this study is to understand what influences the perception of justice and the criminal justice system by individuals that have been affected by a criminal offence. This perception may be influenced by different judicial procedures and services used. A better understanding of what affects the sense of justice will allow us to optimize the assistance provided to individuals concerned.

2. Participation in the study

Your participation in this study is voluntary and there will not be any negative consequences should you refuse to participate, withdraw from the study, or refuse to answer certain questions.

Your participation is limited to a single interview. This interview will focus on your experiences with the judicial procedures and services used. You will decide what you would like to tell us about the offence, its impact and the procedures used.

The interview will take up a maximum of three hours at a time most convenient for you and at an agreed upon location.

The interview will be recorded on a digital voice recorder, unless you object. The recording only serves to ensure the registration and recollection of the information provided during the interview. Only the researcher will have access to the recording. You will also be asked to complete a form regarding certain sociodemographic information, which will again only be available to the researcher.

3. Criteria for exclusion

All individuals under the age of 18 are not allowed to participate.

4. Confidentiality

All information provided in the interview and in the form will be confidential. Only the researcher will have access to data that may reveal your identity. Data will be kept in a locked cabinet in a private office. Information that exposes your identity will not be published - every participant will remain anonymous. Moreover, the data revealing your identity will be destroyed seven years after the completion of the study. Only the data that does not reveal your identity will be saved after this period.

5. Possible impact

Your participation in this study allows us to have an accurate insight on the issues and concerns of individuals that have been affected by a criminal offence. With your participation in this study, you will contribute to the optimization of the treatment for those affected by crime in the criminal justice system.

During or after the interview, you may experience emotions, such as fear or insecurity, from the recollection of the crime. If this is the case, do not hesitate to let the researcher know. She will be able to refer you to a support service if needed.

6. Possibility to withdraw from the study

Your participation is voluntary. You are free to discontinue your participation at any time. You do not need to justify your decision to the researcher and there will not be any consequences to your decision to retreat from the study. To withdraw, you can contact the researcher (see below for contact information). Should you withdraw from the study, any information that you have already provided will be removed from the researcher's database and documentation.

B) CONSENT

I declare that I understand the information provided above and my questions regarding my participation in the study have been answered. I understand the objective, the nature, benefits, risks and inconveniences of the study and my participation.

Having understood the information provided to me, I consent to take part in the study. I am aware of the possibility to withdraw from the study at any time without prejudice and need for justification.

Signature: _____ Date: _____

First name: _____ Last name: _____

I declare that I have duly explained the objective, nature, benefits, risks and inconveniences of the study and I have responded to the best of my knowledge any questions asked.

Signature of researcher: _____ Date: _____

First name: _____ Last name: _____

If you have any further questions regarding this study or to withdraw your participation, please contact the researcher, Tinneke Van Camp:

☎ … (toll free)

@

✉ Tinneke Van Camp, School of Criminology, University of Montreal, C.P. 6128, Succ. Centre-ville, Montreal, Québec H3C 3J7

Any complaints related to this study can be communicated to the ombudsman of the University of Montreal on +1(514)343-2100 or … . **(The ombudsman accepts collect calls)**

A copy of the signed consent form will be given to the participant.

Titre de la rercherche : La justice telle que perçue par les personnes affectées par un acte criminel
Chercheure : Tinneke Van Camp, candidate au doctorat, École de criminologie, Université de Montréal, Québec.
Directeure de recherche : Jo-Anne Wemmers, docteure en criminologie, professeure agrégée, École de criminologie, Université de Montréal, Canada.

A) RENSEIGNEMENTS AUX PARTICIPANTS

1. Objectifs de la recherche

L'objectif du projet est de connaître et de comprendre ce qui influence la perception de justice des personnes qui ont été affectées par un acte criminel. Cette perception peut notamment être influencée par les différentes procédures suivies et par les services utilisés. Une meilleure connaissance de ces éléments nous permet d'assister correctement les personnes concernées.

2. Participation à la recherche

Votre participation est tout à fait volontaire. Vous pouvez refuser de prendre part à cette recherche, vous pouvez décider de vous en retirer en tout temps, ou vous pouvez refuser de répondre à certains questions, sans aucune pénalité.

Votre participation à la recherche se limite à une seule entrevue. Cette entrevue porte sur votre expérience avec les procédures judiciaires et avec les différents services utilisés. Vous êtes toujours libre dans le choix des informations que vous souhaitez partager. Les rencontres seront d'une durée maximale de trois heures et nous conviendrons ensemble du lieu et de l'heure les plus convenables.

Si vous n'avez pas d'objection, notre entretien sera enregistré en format digital. Cet enregistrement sert le seul but de ne pas perdre de l'information donnée pendant l'entrevue et ne sera accessible que pour la chercheure. En terminant, je vous demanderai de remplir un formulaire recueillant vos informations sociodémographiques.

3. Critères d'inclusion ou d'exclusion

Vous ne pouvez pas participer à cette étude si vous n'avez pas au moins 18 ans.

4. Confidentialité

Les renseignements que vous nous donnerez demeureront confidentiels. Seule la chercheure principale aura accès aux données nominatives des participant(e)s. De plus, les renseignements seront conservés dans un classeur sous clé situé dans un bureau fermé. Aucune information permettant de vous identifier d'une façon ou d'une autre ne sera publiée. Ces renseignements personnels seront détruits 7 ans après la fin du projet. Seules les données ne permettant pas de vous identifier seront conservées après cette date.

5. Avantages et inconvénients

Votre participation à cette étude nous permettrait de mieux connaître les intérêts des personnes qui ont été affectées par un acte criminel. Ainsi, en participant à cette étude, vous contribuez à l'optimisation de l'assistance et du traitement des personnes concernées au sein du système judiciaire.

Cependant, il est possible que vous ressentiez des émotions telles que la peur ou l'insécurité suite à l'entrevue, étant donné que nous parlerons du crime et de ses conséquences pour vous. Si cela est le cas, n'hésitez pas à me le signaler. Nous pourrions également vous référer à un service d'aide si cela vous semblait utile ou souhaitable.

6. Droit de retrait

Votre participation est entièrement volontaire. Vous êtes libre de vous retirer en tout temps par avis verbal, sans préjudice et sans devoir justifier votre décision. Si vous décidez de vous retirer de la recherche, vous pouvez communiquer avec la chercheure, au numéro de téléphone, adresse courriel ou adresse postale indiqués ci-dessous. Si vous vous retirez de la recherche, les renseignements qui auront été recueillis au moment de votre retrait seront détruits.

B) CONSENTEMENT

Je déclare avoir pris connaissance des informations ci-dessus, avoir obtenu les réponses à mes questions sur ma participation à la recherche et avoir compris le but, la nature, les avantages et les inconvénients de cette recherche.

Après réflexion, je consens librement à prendre part à cette recherche. Je sais que je peux me retirer en tout temps sans préjudice et sans devoir justifier ma décision.

Signature : _____ Date : _____

Nom : _____ Prénom : _____

Je déclare avoir expliqué le but, la nature, les avantages et les inconvénients de l'étude et avoir répondu au meilleur de ma connaissance aux questions posées.

Signature de la chercheure_____ Date : _____

Nom : _____ Prénom : _____

Pour toute question relative à la recherche, ou pour vous retirer de la recherche, vous pouvez communiquer avec Tinneke Van Camp, étudiante chercheure principale :

☎ … (appels sans frais)

@ …

✉ Tinneke Van Camp, École de criminologie, Université de Montréal, C.P. 6128, Succ. Centre-ville, Montréal (Québec) H3C 3J7

Toute plainte relative à votre participation à cette recherche peut être adressée à l'ombudsman de l'Université de Montréal : +1(514) 343-2100 ou … **(L'ombudsman accepte les appels à frais virés).**

Un exemplaire du formulaire de consentement signé doit être remis au participant

Titel van het onderzoek: De perceptie van rechtvaardigheid na het gebruik van gerechtelijke procedures in antwoord op een misdrijf

Onderzoeker: Tinneke Van Camp, doctoraatsstudent aan de School voor criminologie, Universiteit van Montréal, Canada.

Onder leiding van: Professor Dr. Jo-Anne Wemmers, dokter in de criminologie, professor aan de School voor criminologie, Universiteit van Montréal, Canada.

A) INFORMATIE VOOR DEELNEMERS

1. Doelstelling van het onderzoek

Het doel van het onderzoek is beter te begrijpen waardoor het rechtvaardigheidsgevoel van personen getroffen door een misdrijf en de tevredenheid met het rechtssysteem beïnvloed worden. De verschillende procedures en de diensten die gebruikt worden, kunnen daarbij een rol spelen. Inzicht in wat een invloed heeft op het rechtvaardigheidsgevoel maakt het mogelijk om daaraan zo goed mogelijk tegemoet te komen.

2. Deelname aan het onderzoek

Deelname aan het onderzoek is vrijwillig en er zijn geen gevolgen verbonden aan een weigering eraan deel te nemen, aan de stopzetting van de deelname of aan de weigering om op bepaalde vragen te antwoorden. Uw deelname heeft ook geen enkel gevolg voor het gerechtelijk dossier indien dat nog niet afgesloten is.

Uw deelname aan het onderzoek is beperkt tot één interview. Dit gesprek betreft uw ervaringen met de verschillende procedures en diensten die u gebruikte. U bent volkomen vrij om te bepalen wat u vertelt aan de onderzoeker. Het interview duurt ten hoogste drie uur. Het moment en de plaats van het interview bepaalt u in overleg met de onderzoeker.

Indien u geen bezwaar heeft, wordt het interview opgenomen op een dictafoon. Deze opname is alleen bedoeld om de informatie die u geeft zo goed mogelijk te kunnen opnemen in het onderzoeksrapport. De opname zal alleen worden beluisterd door de onderzoeker. Op het einde van het gesprek zal u gevraagd worden een formulier betreffende persoonsgegevens (bijvoorbeeld leeftijd, burgerlijke staat, gebruikte gerechtelijke procedures) in te vullen. Alleen de onderzoeker zal deze gegevens kunnen inkijken.

3. Criteria voor deelname

U kan niet deelnemen aan het onderzoek als u jonger bent dan 18 jaar.

4. Vertrouwelijkheid van gegevens

Wat u aan de onderzoeker vertelt tijdens het interview is vertrouwelijk. In het onderzoeksrapport worden geen gegevens opgenomen die uw identiteit bekendmaken - iedereen die deelneemt aan het onderzoek blijft anoniem. Alleen de onderzoeker kan de persoonsgegevens die worden gegeven tijdens het interview inkijken. Bovendien worden alle gegevens bewaard in een vergrendelde archiefkast in een afgesloten bureauruimte. Tenslotte worden alle persoonsgegevens vernietigd zeven jaar na afloop van het onderzoek. Alleen de gegevens die de identiteit van de deelnemers niet verraden, worden bewaard na die datum.

5. Impact van de deelname

Uw deelname aan het onderzoek verhoogt het inzicht in de behoeften van personen getroffen door een misdrijf. Op die manier draagt uw deelname aan het interview bij tot het kunnen geven van een goede bijstand aan deze personen in het rechtssysteem.

Het is mogelijk dat u naar aanleiding van het interview gevoelens ervaart zoals angst of onveiligheid omdat het gesprek een ingrijpende gebeurtenis betreft. Aarzel niet om dit aan de onderzoeker te melden. Zij kan u, indien u dat wenst, doorverwijzen naar diensten die bijstand kunnen bieden.

6. Mogelijkheid om deelname op te zeggen

Uw deelname is vrijwillig. U bent vrij om uw deelname op eender welk moment stop te zetten, zonder die beslissing te moeten uitleggen. Er zijn geen negatieve gevolgen verbonden aan een stopzetting van deelname. Indien u zich wil terugtrekken uit het onderzoek, kan u dit laten weten aan de onderzoeker (zie contactgegevens hieronder). Indien u uw deelname stopzet, zal de reeds van u verkregen informatie worden verwijderd uit de documentatie van de onderzoeker en het onderzoeksrapport.

B) INSTEMMING

Ik verklaar kennis te hebben genomen van de hierboven vermelde informatie, antwoord te hebben gekregen op vragen die ik had betreffende mijn deelname aan het onderzoek, en het doel en de natuur van het onderzoek alsook het nut en de eventuele hinder als gevolg van het interview te begrijpen.

Na beraad stem ik vrijwillig in met deelname aan het onderzoek. Ik ben op de hoogte van de mogelijkheid mijn deelname op eender welk moment te kunnen stopzetten, zonder dat ik mij daarvoor moet verantwoorden.

Handtekening : _____ Datum : _____

Naam : _____ Voornaam : _____

Ik verklaar het doel en de natuur van het onderzoek alsook het nut en de eventuele hinder als gevolg van het interview te hebben uitgelegd en dat ik zo goed mogelijk heb geantwoord op de vragen die me werden gesteld met betrekking tot het onderzoek.

Handtekening van de onderzoeker : _____ Datum : _____

Naam : _____ Voornaam: _____

Voor alle andere vragen over het onderzoek, gelieve contact op te nemen met de onderzoeker, Tinneke Van Camp :

☎ ...

@ ...

✉ Tinneke Van Camp, École de Criminologie, Université de Montréal, C.P. 6128, Succ. Centre-ville, Montréal, Québec H3C 3J7

Voor klachten betreffende het onderzoek, gelieve contact op te nemen met de ombudsman van de Universiteit van Montréal, op het nummer +1(514) 343-2100 of op het e-mailadres ... **(De ombudsman accepteert de kosten van een telefoongesprek)**

Een ondertekend exemplaar van het instemmingsformulier wordt overhandigd aan de respondent.

Annex 6. Identification card

N° entrevue	
Langue	
Place	
Date	
Heure de début	
Heure de fin	

Sexe	
Âge	
État civil	
Enfants	
Occupation	
Niveau de scolarité le plus élevé	

Type de crime dont victime	
Date du crime	
Auteur connu ou inconnu	
Si connu, dans quel contexte	
Sentence donnée à l'auteur	

Eu contact avec police?	
Eu contact avec procureur?	
B : Eu contact avec magistrat d'instruction?	
Eu contact avec service d'aide? Le(s)quel(s)?	
Statut dans procédure pénale (**B** : partie civile, témoin, autre; **C** : témoin)	
Soumis fiche victime (**B** : auprès tribunal exécution des peines; **C** : auprès juge)?	

Quel type d'intervention réparatrice (médiation, VISA, autre)	
Quand?	
Avant ou après jugement?	
Durée (y inclus préparation)?	
Si médiation, qui a initié médiation (vous ou auteur)?	
Si médiation, directe ou indirecte?	
Si médiation, résultat?	
Si médiation, seule ou avec proche(s)?	

Sur une échelle de 1-10 quelle est votre satisfaction avec traitement policière?	
Sur une échelle de 1-10 quelle est votre satisfaction avec traitement judiciaire?	
Sur une échelle de 1-10 quelle est votre satisfaction avec médiation / VISA / intervention réparatrice?	

N° interview	
Language	
Place	
Date	
Start time	
End time	

Gender	
Age	
Civil status	
Children	
Occupation	
Highest educational degree	

Nature of crime of which victim	
Date of crime	
Aggressor known or unknown	
If known, in which context	
Sentence given to aggressor	

Have you had contact with police?	
Have you had contact with prosecutor?	
B : had contact with investigating judge?	
Have you had contact with support services? Which one(s)?	
Status in penal proceedings (**B** : civil party, witness, other; **C** : witness)	
Submitted Victim Impact Statement (**B** : to court for execution of punishment; **C** : to judge)?	

Type of restorative intervention (mediation, VISA, other)	
When?	
Before or after judgment?	
Duration (preparation included)?	
If mediation, initiated by whom (you or aggressor)?	
If mediation, direct or indirect?	
If mediation, outcome?	
If mediation, alone or with relative/friend?	

On a scale of 1-10 what is your satisfaction with treatment by police?	
On a scale of 1-10 what is your satisfaction with judiciary treatment?	
On a scale of 1-10 what is your satisfaction with mediation / VISA / restorative intervention?	

N° interview	
Taal	
Plaats	
Datum	
Startuur	
Einduur	

Geslacht	
Leeftijd	
Burgerlijke staat	
Kinderen	
Beroep	
Hoogste opleidingsniveau	

Type delict waarvan slachtoffer	
Datum van het delict	
Dader was bekende of onbekende voor u?	
Als bekende, in welke context?	
Straf opgelegd aan dader (indien reeds bepaald)	

Contact gehad met politie?	
Contact gehad met procureur?	
B : Contact gehad met onderzoeksrechter?	
Contact gehad met diensten slachtofferzorg? Dewelke?	
Statuut in strafprocedures (**B** : burgerlijke partij, getuige, ander; **C** : getuige)	
Slachtofferfiche ingevuld? (**B** : voor commissie strafuitvoeringsrechtbank; **C** : voor rechter)?	

Welk type herstelgerichte interventie (bemiddeling, FGC)	
Wanneer?	
Vóór of ná strafrechtelijke uitspraak?	
Totale duur (voorbereiding inbegrepen)?	
Als bemiddeling, op wiens initiatief (u of dader)?	
Als bemiddeling, direct of indirect?	
Als bemiddeling, resultaat?	
Als bemiddeling, alleen of met familielid/vriend?	

Op een schaal van 1-10 wat is uw tevredenheid met behandeling door politie?	
Op een schaal van 1-10 wat is uw tevredenheid met behandeling door gerecht?	
Op een schaal van 1-10 wat is uw tevredenheid met bemiddeling / VISA / herstelgerichte interventie?	